



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RELIANCE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$2,325.00; and a monetary order for damage or compensation for damage under the Act of \$1,162.50, retaining the security deposit for these claims; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, A.S. and N.S., and an agent for the Landlord, B.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

At the outset of the hearing, I asked the Agent for the name of the Landlord in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that she works for the property management company, which represents the owner, and the Agent said she erroneously put her own name on the Application, instead of that of the corporate Landlord. As a result, I amended the Applicant's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to Recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 6, 2020, and was to run to May 31, 2021, and then operate on a month-to-month basis. The Parties agreed that the Tenants paid the Landlord a monthly rent of \$2,325.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,162.50, and a pet damage deposit of \$1,162.50. The Parties agreed that they conducted a condition inspection of the rental unit at the start of the tenancy, and a condition inspection at the end of the tenancy. They agreed that the Landlord had given the Tenants a copy of the resulting condition inspection report ("CIR").

#1 MONETARY ORDER FOR UNPAID RENT → \$2,325.00

In the hearing, the Landlord said that the Tenants provided her with a full month's notice on September 30, 2020 of their intent to end the tenancy as of October 31, 2020. The Landlord said that the Tenants were told that they will be charged for November's rent and the liquidated damages, as set out in the tenancy agreement for the cost to re-rent the rental unit. The Landlord said she then put a leasing team in charge of re-renting the suite.

The Landlord said that the notice for the vacant apartment was not on their website by October 5, 2020, when she checked. She said:

It was the lowest in price that we would have, also the smallest – a 475 square foot unit. I asked the leasing team what they were doing with this posting; they are aware that the Tenants are moving out. We email them our weekly vacancy report. They didn't post the unit yet. But every time someone comes in about a rental opportunity, they speak about it, too. People come there hoping to negotiate the prices. They offered something like this at lower rate. We do virtual tours for people in U.S. We avoided entering the suite, since June except for emergencies.

When we are providing empty units in this brand-new building, we do virtual tours. An issue we had was we approved an application, and once someone is approved, we can't give it to someone else. It was a U.S. applicant.... On November 3 he announced that he decided to move to another landlord. We had to start all over again.

We're not claiming the rent credit to the Tenants – there was a promotion, but only for 12-month leases - a credit of \$4,950.00. It included a four month rent reduction, free bike storage for a year. We're not going after that. On top of that, we had significant financial losses, too. We re-rented the suite from January 15, 2021. We kept showing it until then at the same rate.

The Tenants said:

We knew about the liquidated damages, and that's it. We didn't know about paying for November's rent.

When I talked with [T.], she said there would be liquidated damages, but she said for November, you just have to pay if they don't find a new tenant for the unit. When we moved out, [T.] said we had to pay for November, which I didn't know. I questioned her about that. They said they didn't advertise the apartment, because the rent was lower than the others. They talked about the apartment with some people in the U.S., but they didn't offer it much for other people.

We're okay with liquidated damages, because they have to spend money renting it out. But they didn't look enough. I found the apartment was not in any advertisements, so it's not fair that they charge me for November, if they didn't try well to find a new tenant.

The Landlord said:

We worked with the leasing team a few months before the building opened. They were involved in the project since December 2019, and they were working on waiting lists. They had a display suite, scheduled showings, answered all emails and calls – they dealt with the whole renting process. We filled the building to 90%, and the building managers took over the renting of the suites.

In the email dated September 30 from the building manager – when they provided the notice — she is sending them a document: “improper notice”, which informed that we will claim for financial losses. They didn’t ask for any clarifications on that. To be honest, there’s a bit of a language barrier. I would have intervened myself and assisted, if necessary.

The Tenants said:

When I said I wasn’t comfortable to sign that I didn’t give 30 days, but I did. They said I could pay if they have any losses. But if they tried harder to rent the apartment, they wouldn’t have any loss.

It’s not our fault that the way they tried to rent apartment. We were looking – we didn’t find an apartment at the same price that we were paying. We felt . . .they advertised it at \$2500+ - not our unit, but the lowest one.

He means that they only advertised for high prices and not for our unit, specifically.

You can see proof in what we submitted. I talked with them by email and they said they didn’t want to put our unit up, because our unit was low, and they wanted to advertise the high prices first.

The Landlord said:

It was on our website but not on other platforms until November 3. We had a prospect approved until . . .we signed all these documents. The resident was coming from outside the country and province, so it takes longer than normal. We give a deadline to these approved prospects. As long as they keep submitting documents. We have to wait for them to mail out the security deposit, so we had to wait . . . we had two prospects with the same asking price. In parallel, he went to building next door.

We didn't get a deposit from him . . . he said it was sent, but if it is not there, he would provide a cheque and cancel the one he sent by courier. We don't sign the tenancy agreement until we have the deposit on hand.

We have 13 buildings in this city, and this is the only building that has a different target. There are lots of professionals who are sent for one year or two and this is probably the only building where we would have allowed six-month leases. And there are a couple furnished units. Usually people from abroad react better and faster.

#2 LIQUIDATED DAMAGES → \$1,162.50

The Agent said that the Landlord seeks to recover liquidated damages that the tenancy agreement states they may claim from the Tenants, if the Tenants breach the fixed-term tenancy agreement. Clause 9 of the Addendum to the tenancy agreement states:

9. Liquidated Damages: If the tenant ends the fixed term tenancy before the end of the original term as set out in section 2 of the Residential Tenancy Agreement, the landlord may, at the landlord's option, treat this Agreement as at an end. In such event, \$ 1162.50 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administrative costs of re-renting the rental unit....

In the hearing, the Tenants said that they do not dispute the Landlord's claim for liquidated damages.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 7 of the Act states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Policy Guideline #16 sets out that damage or loss is not limited to physical property only, but also includes less tangible costs, such as loss of

rental income that was owing under a tenancy agreement.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, Regulation, or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Policy Guideline #5 states that where a party breaches a term of the tenancy agreement or the Act or regulation, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is commonly known as the duty to minimize the loss. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be reimbursed for a loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be “reasonable” in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss or incur excessive costs in the process of mitigation. If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

#1 MONETARY ORDER FOR UNPAID RENT → \$2,325.00

The Landlord acknowledged that the Tenants gave 30 days’ notice of their intent to end the tenancy; however, the Parties were in a fixed-term lease.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. [emphasis added]

In this case, I find that the Tenants ended a one-year, fixed term tenancy seven months early, contrary to section 45(2) of the Act and the tenancy agreement. I find that this

breach deprived the Landlord of \$2,325.00 in rental income for each of November 2020, December 2020, and half that amount for January 2021. Pursuant to sections 7 and 67 of the Act, I find that the Tenants are required to compensate the Landlord for this loss of rental income to the end of the term in the tenancy agreement.

However, a landlord also had a duty to minimize that loss by re-renting the unit as soon as possible. The Agent acknowledged that the Landlord did not advertise this specific rental unit, other than to mention it to people when they enquired about other units. The Agent said that the Landlord prefers to rent the higher priced units first.

I find that the Landlord's preference is not the fault of the Tenants, and I find on a balance of probabilities that the Landlord did not take sufficient steps to advertise the rental unit to as wide an audience as possible. I find that the Landlord did not sufficiently mitigate their damage in this regard and that the Tenants are not to blame for the loss of rent for November 2020. I, therefore, reduce the amount awarded to the Landlord by half to represent the Landlord's failure to mitigate their loss. Accordingly, the Landlord is awarded **\$1,162.50** from the Tenants for this claim.

#2 LIQUIDATED DAMAGES → \$1,162.50

The Tenants did not dispute the Landlord's claim for liquidated damages, given the relevant clause in the tenancy agreement. As a result, I award the Landlord with **\$1,162.50** in liquidated damages from the Tenants.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' \$1,162.50 security deposit and their \$1,162.50 pet damage deposit.

Given the Landlord's success in their Application, I also award them with recovery of the **\$100.00** Application filing fee pursuant to section 72 of the Act for a total award of for a total award of **\$2,425.00**. I authorize the Landlord to retain the Tenants' \$2,325.00 security and pet damage deposits in partial satisfaction of the monetary awards. I grant the Landlord a Monetary Order of **\$100.00** from the Tenants for the remaining amount owing, pursuant to section 67 of the Act.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful.

The Landlord has established a monetary claim of \$2,425.00. I authorize the Landlord to retain the Tenants' full security and pet damage deposits of \$2,325.00 in partial satisfaction of the claim. The Landlord has been granted a Monetary Order under section 67 for the balance due by the Tenants to the Landlord in the amount of \$100.00.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 19, 2021

Residential Tenancy Branch