



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT, MNRL, MNDCL, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On December 7, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 15, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. V.P. and L.T. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord on or around December 14, 2020 by registered mail, and V.P. confirmed that the Landlord received this package. Based on this undisputed evidence, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenant’s evidence and will consider it when rendering this Decision.

V.P. advised that the Landlord served the Notice of Hearing and evidence package to the Tenant on January 20, 2021 by registered mail, and the Tenant confirmed that he received this package. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of

the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 18, 2020 as a fixed term tenancy ending on July 31, 2021. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 23, 2020. Rent was established at \$1,470.00 per month and was due on the first day of each month. A \$150.00 per month parking fee was noted in the tenancy agreement. A security deposit of \$735.00 and a key fob deposit of \$10.00 were also paid. A copy of the tenancy agreement was submitted as documentary evidence.

The Tenant advised that his job was terminated on October 22, 2020 so he gave the Landlord his notice to end his tenancy that day, and he gave up vacant possession of the rental unit on October 23, 2020. He stated that on October 26, 2020, he offered a \$1,000.00 incentive and a month's free rent to anyone that may have been interested in signing a tenancy agreement, and the Landlord advised him that they would not be involved with his incentive offer. He submitted that he received many inquiries from interested tenants and referred these to the Landlord. He stated that one particular prospective tenant that wanted to move in immediately was not approved despite her

seemingly being a suitable candidate. He questioned why a credit check was not conducted on this applicant.

He stated that the applicant that was accepted as a new tenant for December 15, 2020 submitted her application on October 26, 2020 and the Landlord did not mitigate sufficiently as the tenancy only started six weeks later. He referenced the Landlord's evidence and stated that he did not notice this person's name on the list of people that made inquiries into the rental unit. He confirmed that he paid rent and parking for November 2020.

V.P. advised that the Landlord immediately started advertising the rental unit after receiving the Tenant's notice to vacate on October 23, 2020. The unit was listed on three different websites and the newspaper. She stated that there was lots of interest; however, only some of these parties submitted applications to rent. She stated that the Tenant did not submit any evidence to demonstrate that he forwarded contact information for prospective tenants to the Landlord. She advised that the one candidate that the Tenant had hoped to be successful was not currently working and did not provide proof of her ability to pay the rent. Thus, she was not a successful applicant. She stated that the Tenant only started objecting to pay half of December 2020 rent when he was informed on November 5, 2020 that the successful applicant would commence renting on December 15, 2020. She confirmed that the Tenant paid November 2020 rent and parking.

L.T. advised that the abundance of interested parties that the Tenant spoke of does not necessarily mean that they actually contacted the Landlord. She stated that the Landlord only received three applications for the rental unit, and that two were not approved. She indicated that the one applicant that the Tenant hoped would be successful confirmed that her monthly income was only \$2,300.00 per month and that she did not want to withdraw from her retirement savings to pay for the rent. She confirmed that the successful applicant was approved on November 3, 2020; however, as she was in a lease currently, she would not be able to start renting until December 15, 2020. She referenced documentary evidence to support the Landlord's position regarding efforts to mitigate this loss.

The Tenant advised that it was his belief that the one unsuccessful prospective tenant that he was hoping would be accepted could in fact pay the rent. While he paid for November 2020 rent and parking, he is requesting that he should have this re-imbursed to him and he should not be responsible for half of December 2020 rent either. He also applied for compensation for a hotel stay for one night; however, he withdrew this claim.

V.P. confirmed that as the Tenant has already paid November 2020 rent and parking, the Landlord is requesting that this amount be permitted to be retained. As well, the Landlord is seeking compensation for the prorated amount of December 2020 rent of **\$663.87** because they were only able to secure a new tenant for December 15, 2020.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the parties' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the parties' claims for November 2020 rent and parking, and for a portion of December 2020 rent, there is no dispute that the parties entered into a fixed term tenancy agreement from August 18, 2020 for a period of one year, ending on July 31, 2021. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on October 23, 2020.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I am satisfied that the Tenant gave notice to end the tenancy on October 22, 2020, contrary to the *Act*. At this point in the month, I find it reasonable to conclude that many prospective tenants looking for a new place to rent for November 1, 2020 had given notice earlier and likely would have secured a tenancy already. Thus, I am satisfied that by giving notice this late in the month, it would have significantly reduced the Landlord's likelihood of re-renting for November 1, 2020.

While I acknowledge the Tenant's attempts to provide financial incentives to re-rent the unit quickly likely generated considerable interest, I find that this does not necessarily equate to qualified candidates. As well, I accept that the Landlord must do their due diligence to secure a qualified prospective tenant, and that the process for screening applicants is not instantaneous.

Given that the Tenant ended the tenancy with such short notice at the end of the month, as the Landlord was able to secure a new, qualified tenant on November 3, 2020, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rent the unit as quickly as possible. As this new tenant was determined to be the successful applicant within two weeks of the Tenant's sudden notice, I do not find it reasonable that the Landlord should have passed on this qualified tenant in the hopes of finding another qualified tenant that could rent sooner than December 15, 2020. Therefore, I am satisfied that the Tenant is responsible for the November 2020 rent and parking.

Thus, the Tenant's Application is dismissed in its entirety and the Landlord is permitted to retain these amounts. Furthermore, as I am satisfied that the Landlord sufficiently mitigated this loss, I grant the Landlord a monetary award in the amount of **\$663.87** to satisfy the Landlord's claim for December 2020 prorated rent.

As the Tenant was not successful in these claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

December 2020 rent owed	\$663.87
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$763.87

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a Monetary Order in the amount of **\$763.87** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision 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 23, 2021

Residential Tenancy Branch