



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-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 for the Landlord in the amount of \$2,400.00, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of her Application filing fee.

The Tenants, M.J. and S.D., and the Landlord 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 Landlord 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. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlord.

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.

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 \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a copy of the Parties' tenancy agreement and they confirmed the following details of the tenancy in the hearing. The fixed-term tenancy began on July 1, 2020, with a monthly rent of \$1,200.00, due on the first day of each month. The Tenants paid the Landlord a security deposit of \$600.00, and no pet damage deposit. The Parties agreed that the rental unit is a bachelor suite in a duplex and that the Landlord lives in the suite above the rental unit with her adult son.

The Landlord said that the Tenants gave her written notice to end the tenancy dated October 3, 2020, in which they said they would be ending the tenancy, effective October 31, 2020. The Landlord said that this was insufficient notice, as they are required to give at least 30 days notice, with the effective vacancy date being on the day before rent is ordinarily due in the tenancy.

The Tenants said that the relationship with the Landlord changed, and that they became fearful of the Landlord; they said they decided they needed to move, as a result. This resulted from an incident involving the bed that was provided with the rent of the suite. The Tenants said that they found the bed to be uncomfortable. The Tenants said:

It was worn out, so we were not comfortable with the bed. We were going to get rid of it for her. We had the financial power to buy a bed. We brought everything to the house, and we told her that we don't need hers any more. So, I took the bed and bedframe out and built the new one. I told her that they were outside, and you can take care of it. She was very, very mad, and she said she's not responsible for it, and that we should take care of it for her. She was very upset and texted me and said it's a big problem for her. My wife was downstairs, and the Landlady was upstairs banging doors, and she texted me saying it's a big problem. I came home after work; [S.D.] was scared. What if people are sleeping with what's going on? . . . We are scared to live there. If we can't stay here, working from home, it doesn't make sense to stay where you don't feel safe. We told her and she said we have to give one month's rent.

We didn't damage anything, but we are willing to give you the \$600.00 [security deposit], and we are going to move out. She was really mad about that. She had an argument with her son and banged doors. It's not safe. We decided to move out on the 24th. We did the post-inspection of the place, which was not damaged. We gave her a day ahead notice; we just missed the one date. We felt unsafe to live there based on her attitude.

The Landlord said:

I just opened the text messaging between [M.J.] and myself. When I rented my place downstairs, I rented it furnished. Yes, they wanted to replace the mattress down the road. They asked me if they could replace the mattress, because it's not comfortable. It is polite. 'Good morning. We would like to change the mattress.'

Okay, okay, very nice conversation. He double checked with me that I am okay to dump the mattress. What if my next tenant needs it? But in this case, I agreed and said 'okay, guys, no problem - thank you for asking'. I was not mad. We went all the way agreeing.

Could you do something for me, if you were dumping the mattress, I have no vehicle. I would take it to the dump, but I have no vehicle. He said okay, he'd do it. Are you okay with getting rid of the bedframe and the mattress? Yes.

After that, they moved their own bed in and all of a sudden, without saying nothing, I see my mattress in the rain in the mud. I contacted them - how come you didn't tell me about this? The long story short, they couldn't do that for me. This is a big problem for me. I was not yelling or screaming, they had no reason to be afraid of me. They should have asked me where to put it, so I told them about the bed, he said there's still conversation. He said he really wanted to help getting rid of this mattress, but he can't. I should not have agreed with this. There was not any reason to be not safe here. The first time I'm hearing this now that they were unsafe. At the end of the story they wanted to move out. [S.D.] was cooperating with me and wanted to make amends for moving early. I would like [S.D.] to speak for herself. [M.J.] always steps in. She understood the rules about the lease. We were going to resolve this before going to arbitration. I've never been to that. [S.D.] was for that, but then he stood up and said we're leaving you with \$600.00 and we're moving away. Even before they knew this on October 31st - they didn't give me the forwarding address until a couple days ago - he's

messaging asking for their mail.

I am here two months sitting in the Covid situation. Not knowing how to pay and cover my bills. I am a very good Landlord. I had tenants here before. I resolved the problem with the mattress – I paid for renting a truck, and paying \$100.00 for the mattress to be put in the garbage, which I would have covered, if they did this before me.

As a result, the Tenants gave the Landlord notice to end the tenancy, which was a typed letter dated October 3, 2020. It was signed by both Tenants, it has the rental unit address and it gives the effective vacancy date of October 31, 2020. It ended with: “Thank you for renting us your suite for the past four months.”

The Landlord said that she sought new tenants immediately through a social media platform that allows people to advertise available rental units. The Landlord said:

I would notify [S.D.] that I am bringing someone. I would see her every second day. Many, many people came and came and go,,,, I reposted all the time, because I am damaged with this. I actually lose money in this whole situation. I really tried to have somebody. And closer to the middle of December, no one would show up anymore – just a bad season. Finally, a student came and took it for January 1st.

The Landlord said that she gets the most responses by using this social media platform:

I get much more replies from that place. There is also a [C.'s] list, and international students, but Covid 19 changed things a lot. Students are not coming; it was really tough to rent. No international travellers, people coming and going. But I'm happy that it happened

[S.D.] said:

Yes, to confirm, I saw quite a few, but not a lot. There were people who said they were interested, looked around, talked outside. I thought she had someone in advance. But I didn't know what her plan was.

She would say some people would come, but some people would cancel. In October in the beginning, only 1 or 2, then people stopped coming. In that environment, I'm working nine hours a day. My job requires me to talk to people

on the phone. There would be a lot of argument and fighting [upstairs]. I'm paying money to this person and I feel unsafe.

The Landlord said:

Two things. First, why would I give wrong information? It's in my interest to rent the place. Many people came, and they cancelled, as well. People do that. Maybe they don't even reply. This is how it goes. Why would I not want to rent a place? She worked before I brought people. I tried to make appointments after five o'clock, or I would wait for her permission.

You never complained about yelling. . . this is the first I've heard of this. Where does the fear come from? My son and I live upstairs, his girlfriend would comes sometimes, too. I don't understand the fear part. [Potential renters] were coming in October and November, in the middle of the month, and then they stopped. Not everyone who makes appointment comes.

M.J. said:

Bottom line, we never intended to get to this arbitration. From the very onset, to the second day of October, we missed... just because of the way she behaved. 'You guys are giving notice'. We missed the day, we would like you to keep the \$600.00 you have. There is no damage. We left everything like that. She was very much like, no, no, no, she's not going to do that – keep just the \$600.00... - she wants more.

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.

Unpaid Rent Owing

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 eight months early, contrary to section 45(2) of the Act and the tenancy agreement. I find that this breach deprived the Landlord of \$1,200.00 in rental income for each of November and December 2020. 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, the Landlord also had a duty to minimize that loss by re-renting the unit as soon as possible. I find that the Landlord started to advertise for new tenants in October 2020. I find that the Landlord did what was reasonable in the circumstances, even to the point of trying to arrange showings that were convenient for [S.D.] who worked from home. As a result, I do not decrease the Landlord's claim for recovering rental income

from the Tenants, due to a failure on the Landlord's part to minimize the damage. The Tenants said that they were "afraid" of the Landlord, because she was angry with them when they failed to do what they said they would do with the Landlord's mattress and bedframe. I find it reasonable that the Landlord would be angry in this situation, as she did not have a vehicle with which to remove the bed parts from the yard and the Tenants told her that they would take care of it. The Landlord had to pay truck rental and dumping fees to remove the mattress and bed frame. While this is not relevant to the issue before me, I find it displays the Tenants' character in breaching this agreement with the Landlord, followed by breaching a fixed-term tenancy agreement. If the Tenants had concerns about the Landlord's behaviour, they could have applied for dispute resolution, claiming for a loss of quiet enjoyment of the rental unit. However, I find that they chose to breach their tenancy agreement, instead of following the legal options open to them.

Based on the evidence before me overall and on a balance of probabilities, I find that the Landlord is entitled to recovery of two months' rental income at \$1,200.00 per month, and I, therefore, award the Landlord with **\$2,400.00** from the Tenants, pursuant to section 67 of the Act. I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$600.00. I authorize the Landlord to retain the Tenants' \$600.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a Monetary Order of **\$1,900.00** from the Tenants for the remaining award owing to the Landlord by them.

Conclusion

The Landlord is successful in her claim for compensation from the Tenants in the form of unpaid rent of \$2,400.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenants for a total award of \$2,500.00.

The Landlord is authorized to retain the Tenants' \$600.00 security deposit in partial satisfaction of the monetary award. The Landlord is granted a Monetary Order of \$1,900.00 from the Tenants for the remaining award owing.

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 03, 2021

Residential Tenancy Branch