



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent owed under the tenancy agreement; and
- recovery of the filing fee.

The landlord and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recover the cost of the filing fee?

Background and Evidence

The undisputed evidence is that this fixed term tenancy began on January 15, 2020, a fixed term through January 15, 2021, monthly rent of \$2,000, due on the 1st day of the month, and a security deposit of \$1,000 and pet damage deposit of \$1,000 being paid by the tenants to the landlord.

The landlord returned the tenants' security deposit and pet damage deposit.

The undisputed evidence was that the tenants vacated the rental unit on or about November 29, 2020.

In support of her application, the landlord submitted that the tenants were obligated to pay rent through the end of the fixed term, in this case January 15, 2021. Instead, the tenants gave notice and ended the tenancy on or before November 29, 2020. The landlord submitted that this insufficient notice caused a loss of rent revenue of \$2,000 for December 2020.

The landlord submitted that she received the tenants' notice to vacate in a phone call on October 30, 2020, followed by an email on November 5, 2020.

The landlord submitted that she at first had no intention to advertise the rental unit, as her daughter wanted to move in by the end of January 2021; however, the tenants informed the landlord that she had the duty to mitigate, which caused the landlord to place an ad on a local website.

The landlord said that she only advertises on this one website, as this was the only one she ever used to find tenants. The landlord said she was unsuccessful in obtaining a new tenant. The landlord also submitted she had a tenant latterly for January 1, 2021, as her daughter was able to move in earlier.

The landlord submitted that she had many inquiries, but most of the potential tenants wanted a start date of January 1, 2021.

The landlord explained that although the tenants wanted to help find new tenants to mitigate their loss, her strata did not allow for short term rentals.

The landlord submitted she is entitled to the loss of rent revenue due to the tenant's breaking the terms of the fixed term agreement.

The landlord submitted copies of the advertisement listing the rental unit. Other filed evidence included communication between the parties.

Tenants' response –

The tenants submitted that the landlord advertised the rental unit on November 8 and only on one website, but that the listing expired on December 8, 2020.

The tenants submitted that they had offered to help sub-lease the rental unit, to help both the parties in reducing losses but his offer was rejected by the landlord.

The tenants submitted that they had the opportunity to purchase a home themselves, with a lot of family help, and therefore were not flexible in taking possession.

The tenants' relevant evidence included email and text message communication between the parties.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord **written notice** to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date

specified in the tenancy agreement as the end of the tenancy, and 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. [*My emphasis*]

In other words, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

On the basis of the undisputed evidence, I find that the tenants breached the terms of their written tenancy agreement by ending the tenancy before the end of the fixed term. I find the tenants are liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord's obligation to minimize her loss.

Although the tenants questioned whether the landlord did whatever was reasonable to minimize her loss, I find it reasonable that the landlord would be unable to find a new tenant for December 1, 2020, when the tenants' non-verbal notice to vacate was given on November 5, 2020.

Additionally, the non-verbal notice from the tenants to the landlord was not provided in a manner consistent with section 88 of the Act, as email is not listed as an accepted manner in which to serve written documents. Recognized ways in which to serve written documents include by mail or registered mail, personal service, leaving it in the mailbox or mail slot, or attaching it to a door.

I do not accept that the tenants' verbal notice on October 30, 2020, was sufficient in anyway and find this method would not have allowed a landlord to begin advertising.

I also find that the landlord did advertise the rental unit by November 8, 2020, on the site she said she uses with success.

For the above reasons, I therefore find the landlord submitted sufficient evidence that the tenants breached the terms of the written tenancy agreement by vacating the rental unit earlier than the end of the fixed term, without proper written notice and that the said breach caused the landlord to suffer a loss of rent revenue for the following month of December 2020. I therefore find the landlord is entitled to a monetary award of \$2,000, as claimed.

As the landlord was successful, I grant the landlord recovery of her filing fee of \$100.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,100 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for December 2020	\$2,000.00
2. Filing fee	\$100.00
TOTAL MONETARY ORDER	\$2,100.00

The landlord is provided with this order in the above terms. Should the tenants fail to voluntarily comply with the terms of this Decision, the monetary order must be served to the tenants. Should the tenants 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 3, 2021

Residential Tenancy Branch