



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution on January 20, 2021 seeking an order to recover monetary loss for unpaid rent and the cost of the hearing filing fee.

The matter proceeded by way of a hearing on May 25, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord and the tenant both attended the hearing. In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to the tenant, with delivery completed on February 11, 2021. The tenant confirmed they received the prepared evidence and notice of this hearing from the landlord. They also confirmed they did not submit document evidence prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Introduction

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlord and tenants signed this agreement on March 25,

2020. The tenancy started on April 1, 2020 for a fixed term ending on March 31, 2021. The monthly rent was \$1,680 per month. The tenant paid a security deposit of \$840 and a pet damage deposit of \$840. The agreement contains the clause that a \$25 penalty is in place for any late payment of rent.

The tenancy ended when the tenant advised the landlord of their desire for a mutual agreement to end the tenancy on January 10, 2021. It was their intention to end the tenancy on January 31, 2021. This was for reasons surrounding their employment. The tenant provided testimony on their knowledge of the need for the move in November 2020. They then had communication with a manager and thereafter involved themselves actively in finding new tenants for the rental unit. This was with the design of having new tenants come in as an assignment, thereby keeping the existing fixed-term tenancy in place.

The landlord provided a copy of the Mutual Agreement to End a Tenancy, signed by the tenant and dated January 10, 2021. The document is not signed by the landlord.

The landlord provided a copy of their written reply to the tenant dated January 13, 2021. This sets out the landlord's position that the term expires on March 31, 2021. The fixed-term tenancy agreement cannot end before this time. In the hearing, the tenant made note of the fact that this letter was addressed to someone with a different first name.

The tenant did not respond to this letter, and instead moved out on January 13, 2021. The tenant acknowledged that the rent for that month was registered as "non-sufficient funds", with the payment not going through until January 16, after the landlord's attempt on January 6. The tenant accepted fault for this non-payment for January 2021.

The landlord provided that they did not attempt deposit of February rent because the tenant had already moved out at that time. This alleviated another \$25 fee. The landlord stated they had a new tenant in place for March 2021. They reiterated their position regarding the possibility of an assignment, as provided for in s. 20 of the tenancy agreement. Normally a request for assignment would come from the tenant in writing, and this did not occur in November when the tenant first learned of their pending relocation.

The landlord provided an updated document, dated May 25, 2021, that sets out their monetary order claim. This is \$3,385, comprising each of January and February rent amounts (\$1,680 each) and the NSF fee for January (\$25). This was an update from their initial claim that included March rent as well.

The landlord provided they were open to a repayment plan with the tenant. The tenant pleaded for consideration of the fact that there were no issues during the tenancy, with a “clean slate”. The tenant stated a payment plan was not necessary.

Analysis

From the testimony of the parties I am satisfied that a tenancy agreement was in place. They confirmed the specific terms of the rental amount and the paid deposits.

I accept the evidence before me that the tenant ended the tenancy in a manner that does not conform with the stipulations in the *Act* regarding a fixed-term tenancy. This is set out in s. 45(2):

A tenant may end a fixed term tenancy by giving the landlord notice to end the 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.

The tenant made an abrupt end of tenancy. This is not in compliance with the *Act* and the tenancy agreement. This was due to work circumstances requiring a relocation; however, this does not relieve them of the requirements of the *Act* and the tenancy agreement.

Under s. 7 of the *Act*, a party who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the landlord mitigated the loss by having a new tenant in place for March 2021. I am satisfied with the accuracy and legitimacy of their claim as set out above. I so award the amount of \$3,385. I find the tenant acknowledged the legality of the landlord's claim and accepted the amount owed.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$3,385. After setting off the combined security deposit and pet damage deposit amount of \$1,680, there is a balance of \$1,705. I am authorizing the landlord to keep the security deposit amount and award the balance of \$1,705 as compensation for amounts owing as claimed.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,805. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. 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 s. 9.1(1) of the *Act*.

Dated: May 26, 2021

Residential Tenancy Branch