



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 18, 2021. I had allowed the tenant's adjournment application due to illness.

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

PK, landlord, attended the hearing along with PS and SP, agents for the landlords. While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:12 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 am. The landlord and their agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Reconvened Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, landlord's agents and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlords testified that the tenant was served with the landlords' application for dispute resolution package and evidentiary materials by way of registered mail on December 5, 2020. The landlords provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlords' package on December 10, 2020, 5 days after mailing.

The tenant also submitted evidentiary materials for this hearing, which the landlords did not dispute receiving. Accordingly, the hearing proceeded as scheduled.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for money owed or losses?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2019, and was to end on April 30, 2021. Monthly rent was set at \$1,700.00, payable on the first of every month. The tenant moved out on June 30, 2020. The landlords testified that they had never received the written notice the tenant submitted in evidence. The landlords testified that the tenant had texted the landlord on June 18, 2020 that the tenant would be moving out on June 30, 2020. The tenant included a copy of that text message in their evidentiary materials. The landlord testified that regardless, the tenant moved out prior to the end of this fixed-term tenancy. The landlord testified that the tenant's security deposit of \$850.00 was returned to the tenant on July 2, 2020.

The landlords are seeking a monetary order for the following losses associated with this tenancy.

Item	Amount
Loss of Rent for July 2020	\$1,700.00
Liquidated Damages	625.00
Unpaid rent for May & June 2020	1,700.00
Filing Fee	100.00
Total Monetary Order Requested	\$4,125.00

The landlords are seeking recovery of the lost rental income for July 2020 as well as liquidated damages as set out in the tenancy agreement, which is a result of the tenants' early termination of this fixed-term tenancy.

The landlord testified that the tenant had only paid \$850.00 for each of the months of May and June 2020. The landlord testified that they did provide the tenant with an amended agreement with the rent reduction for the months of May, June, July, and August 2020, but an agreement was never signed by the tenant and returned to the

landlords. The landlord testified that this agreement therefore never went into effect, and therefore the monthly rent was still set at \$1,700.00 per month.

Analysis

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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.

I find that the tenant did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution has been filed by the tenant. The tenant moved out earlier than the date specified in the tenancy agreement. I find that the landlords made an effort to mitigate the tenant's exposure to the landlords' monetary losses as is required by section 7(2) of the *Act*, and were able to find new tenants for August 2020. I, therefore, allow the landlord's monetary claim or loss of rental income for the month of July 2020.

I must now consider whether the landlord is entitled to the \$625.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- *A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- *If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- *If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...

I have reviewed the written tenancy agreement. I am satisfied that the landlords had clearly stipulated on the tenancy agreement that the tenant would be responsible for the amount claimed by the landlords as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with locating a new tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlords' monetary claim.

The landlords are seeking a monetary order for unpaid rent.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have reviewed the evidence and testimony before me, and I find that although the landlords did propose a rent reduction, and presented the tenant with an agreement reflecting this reduction, the tenant has not provided sufficient evidence to support that this agreement was signed and accepted. The landlord's testimony is that the agreement was never accepted, and I find that the evidence supports this. Accordingly, I find that the rent was set at \$1,700.00, and the tenant had only paid half of that for the months of May and June 2020. Accordingly, I find that the landlords are entitled to recover \$1,700.00 in unpaid rent for the months of May and June 2020.

As the landlords were successful in their application, I am allowing the landlords to recover the filing fee from the tenant.

Conclusion

I issue a Monetary Order in the amount of \$4,125.00 in the landlords' favour under the following terms which allows a monetary award for money owed, as well as the losses associated with the tenant's failure to comply with the *Act*.

Item	Amount
Loss of Rent for July 2020	\$1,700.00
Liquidated Damages	625.00
Unpaid rent for May & June 2020	1,700.00
Filing Fee	100.00
Total Monetary Order	\$4,125.00

The landlords are provided with this Order in the above terms and the tenant must be served with a copy of 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: May 5, 2021

Residential Tenancy Branch