



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent to the forwarding address provided by the tenant on February 26, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on March 3, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

This fixed-term tenancy began on October 1, 2020 and was scheduled to end on September 31, 2021. Monthly rent was \$1,895.00 payable on the first of each month. The landlord is not holding a security or pet damage deposit for this tenancy.

The tenant gave notice to end the tenancy on October 7, 2020 by email correspondence and subsequently on October 9, 2020 in writing. The tenant provided written authorization on October 9, 2020 that they are responsible for all costs incurred by the Landlord as a direct result of the early end of the fixed term tenancy.

The landlord submits that the costs for finding a new occupant for the rental unit was \$994.88 and submitted into documentary evidence invoices showing the costs incurred. The landlord testified that the costs include strata move-in and move-out charges, advertising costs and time spent vetting and interviewing potential occupants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the

landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In the present case I accept the undisputed evidence of the landlord that the tenant gave notice to end this fixed-term tenancy earlier than its full term. I accept that the landlord was able to mitigate rental income losses but incurred losses for the costs of finding a new occupant. I find the description of the costs incurred, supported by the invoice submitted into evidence, to be reasonable. I accept that the landlord took measures that would be characterized as reasonable and incurred losses as a result.

I find that the landlord has incurred losses due to the tenant’s breach of the fixed term tenancy agreement in the amount of \$994.88. Accordingly, I issue a monetary award in that amount in the landlord’s favour.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord’s favour in the amount of \$1,094.88. 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: July 6, 2021

Residential Tenancy Branch