



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- a Monetary Order for damage and compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant A.H., the landlord and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The landlord testified that the tenants were served with the landlord's application for dispute resolution and evidence via registered mail on April 25, 2021. The landlord testified that the package sent via registered mail contained two dispute resolution and evidence packages addressed to each tenant (the "package"). The landlord provided

the tracking number for the above mailing which is located on the cover page of this decision.

Tenant A.H. testified that tenant A.G. is her spouse and that they live together. Tenant A.H. testified that the tenants did not receive the landlord's application for dispute resolution. The landlord testified that the registered mail was sent to the forwarding address provided by the tenants at the end of this tenancy on the move out condition inspection report. Tenant A.H. testified that the forwarding address she provided on the move out condition inspection report was correct.

The Canada Post website states that the package was delivered on May 4, 2021 and the signatory's name was tenant A.G. Based on the Canada Post website and tracking information on the Canada Post website, I find, on a balance of probabilities, that the landlord's application for dispute resolution was served on the tenants via registered mail and was received by tenant A.G. on May 4, 2021. I find that the tenants were served with the landlord's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Tenant A.H. testified that she did not serve the landlord with the tenants' evidence.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that since the tenants' evidence was not served on the landlord in accordance with *Rule* 3.15, the tenants' evidence is excluded from consideration.

In the hearing both parties provided the other with their current addresses for service.

Preliminary Issue- Amendment

The landlord's application for dispute resolution did not include the suffix of the subject rental address. Both parties agreed on the correct address of the subject rental property. Pursuant to section 64 of the *Act*, I amend the landlord's application to state the correct address of the subject rental property.

Preliminary Issue- Withdrawal

The landlord testified that he thought he uploaded evidence for his monetary claims for damage and compensation to the Residential Tenancy Branch; however, the evidence referenced by the landlord was not uploaded. The landlord testified that he did not wish to continue with the hearing for his claims for damages without the evidence to support them. The landlord elected to withdraw the following claims so that he can submit a new application for damages with the supporting evidence:

- a Monetary Order for damage, pursuant to section 67; and
- a Monetary Order for damage and compensation, pursuant to section 67.

I dismiss the landlord's claim for a Monetary Order for damage and a Monetary Order for damage and compensation, with leave to reapply.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2020 and ended on March 31, 2021. This was originally a fixed term tenancy agreement set to end on May 31, 2021. Monthly rent in the amount of \$4,140.00 was payable on the first day of each month. A security deposit of \$3,995.00 was paid by the tenants to the

landlord. The tenancy agreement states that pets are not permitted. The subject rental property is rented fully furnished.

Both parties agree that a written condition inspection report was not completed at the start of this tenancy. Both parties agree that a written move out condition inspection report was completed on March 31, 2021 but the tenants refused to sign it. Both parties agree that the tenants provided the landlord with their forwarding address on the move out condition inspection report. The landlord filed for dispute resolution on April 8, 2021, eight days after the end of this tenancy and the tenants' provision of a forwarding address in writing.

Both parties agree that the tenants got two puppies and shortly after, a tenant in the unit below the subject rental property complained about the noise. Tenant A.H. testified that a friend of hers had to leave the country on short notice and asked her to take care of her two puppies.

The landlord testified the tenants in the lower unit complained about the noise of pets in the subject rental property. Both parties agree that the landlord sent the tenant a letter dated March 10, 2021 which states:

Per Rental Agreement for the [subject rental property], the owners have reiterated their custom furnished vacation property rental is a no pet tenancy. Tenants are not allowed to have pets on the property.

Please find alternate arrangements for the 2 pets in your care & have them removed by April 10, 2021 from [the subject rental property]]

Thank you for your attention

[Landlord and landlord agents]

Tenant A.H. testified that she tried to find new homes for the puppies but could not. Tenant A.H. testified that the landlord contacted her everyday about complaints made by the lower tenant regarding noise from the dogs. The tenant testified that the landlord told her that she would have to move if she did not get rid of the dogs. Tenant A.H. testified that since she could not find a new home for the dogs she had to leave and so gave notice to end the tenancy on March 24, 2021 effective March 31, 2021.

The landlord testified that prior to the start of this tenancy, the subject rental property was usually rented out on short term rental sites and fully furnished rental sites for a premium but that COVID 19 reduced income from these rental platforms and so the landlord advertised on Craigslist at a lower rate which is how this residential tenancy arose. The landlord testified that the adds for the subject rental property on the short-term rental sites and the furnished rental sites were never taken down.

The tenant testified that she saw an advertisement for the subject rental property on one of the above-described websites in February 2021 for \$5,450.00, before issues with the dogs arose. The tenant testified that the landlord told her that he did not want to extend her contract because she was not paying enough and that he wanted her to pay \$5,400.00 per month. The landlord testified that he did not ask her to pay more money and did not want the tenancy to end but the furnished property is a no pet property which the tenant was aware of at the start of this tenancy. The landlord testified that pets frequently damage furniture which is one of the reasons there is a no pet policy for this furnished rental property.

The landlord testified that the tenant ended the fixed term lease two months early and the landlord is seeking \$8,280.00 in lost rental income from April to May 2021. The landlord testified that the subject rental property was advertised for rent online on Craigslist at the same rental rate paid by the tenant within four days of receiving the tenants' notice to end tenancy.

The landlord testified that he was not able to find a new tenant from the Craigslist add, but one of the old adds from a fully furnished website contacted him and new tenants were found at a rental rate of \$5,895.00. The landlord testified that the new tenants paid a monthly rate of \$5,895.00 starting May 2021. The landlord testified that the new tenants paid the full rent for May 2021 but moved in on May 15, 2021.

The landlord testified that the subject rental property was not ready to be rented until May 10, 2021 due to damage to the bathroom floor caused by the tenants' dogs. The landlord testified that it took a long time to have the bathroom floor re-finished because trades people were in high demand and could not come sooner. Tenant A.H. testified that in an attempt to keep the dogs from disturbing the lower tenants she kenneled them in the bathroom, and they damaged the floor.

Analysis

Section 45(2) of the *Act* states:

(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.

Both parties agreed that pets are not permitted at the subject rental property. I find that the landlord's conduct in requesting the tenants remove the pets to be reasonable given that pets are not allowed. The circumstances which resulted in the pets being given to the tenants are not the landlord's responsibility. I find that the landlord did not force the tenants to break their tenancy agreement and move out early. The landlord sought to enforce the agreed terms of the tenancy agreement and instead of complying with the terms of the tenancy agreement, the tenants ended the tenancy prior to the end of the fixed term, contrary to section 45(2) of the *Act*.

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. 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 entitled to recover compensation for 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.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Residential Tenancy Branch Policy Guideline #3 states:

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy....

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder....

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the RTA and section 30 of the MHPTA). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

I accept the landlord's testimony that the subject rental property was advertised for rent at a rental rate of \$4,140.00 on Craigslist within four days of the tenants providing notice to end their fixed term tenancy agreement early. I find that in posting the above advertisement within four days of receiving the tenants' notice to end tenancy, the

landlord mitigated his damages. I accept the landlord's testimony that the Craigslist add was not successful but an advertisement placed prior to this tenancy yielded results.

Based on the testimony of both parties, I find that the tenants' dogs damaged the bathroom floor and that the tenants did not leave the subject rental property undamaged, contrary to section 37 of the *Act*. I accept the landlord's testimony that it was difficult to find tradespeople to repair the bathroom and that the bathroom was not repaired until on or about May 10, 2021. I find that the damaged floors prevented the subject rental property from being rented out in April 2021.

The landlord is seeking \$8,280.00 in loss of rental income from April to May 2021. I find that the landlord is not entitled to the entire sum claimed because the loss actually suffered by the landlord is significantly lower. As stated in Policy Guideline #3, compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Had the tenant not ended the fixed term tenancy early and had not left the subject rental property damaged, the landlord would have earned \$8,280.00 in rent for April and May 2021. Instead, the landlord only earned \$5,895.00 for that same period. The loss suffered by the landlord is therefore $\$8,280.00 - \$5,895.00 = \mathbf{\$2,385.00}$.

I find that the tenants breached the tenancy agreement by ending the tenancy earlier than that permitted under section 45 of the *Act*. I find that the tenants breached section 37 of the *Act* by leaving the bathroom floors damaged and that these damages were not repaired until on or around May 10, 2021. Pursuant to my above findings and section 7 of the *Act*, I find that the tenants are responsible for the loss of rental income suffered by the landlord in the amount of \$2,385.00.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of receipt of the tenants' forwarding address, pursuant to section 38(1) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain **\$2,485.00** from the tenants' security deposit. I Order the landlord to return the remaining **\$1,510.00** to the tenants.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$1,510.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: October 15, 2021

Residential Tenancy Branch