



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL, MNDCL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 30, 2021 the Dispute Resolution Package was sent to an email address for the Tenant. In a decision dated June 29, 2021, the Landlord was granted authority to serve evidence to the Tenant via email. The Tenant acknowledged receipt of these documents.

In April and August of 2021, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that all of this evidence was served to the Tenant, via email, on August 11, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 06, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that all of this evidence was served to the Landlord, via email, on October 06, 2021. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue and utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- The Landlord, the Tenant, and a co-tenant entered into a tenancy agreement for the rental unit;
- the tenancy began on June 01, 2019;
- the tenancy agreement was for a fixed term, the fixed term of which ended on May 31, 2020;
- the monthly rent was \$1,700.00;
- the Tenant and co-tenant agreed to pay 67% of all utility bills;
- the Landlord would typically provide the Tenant(s) with an email declaring the amount of the utility bills and the Tenant(s) would pay 67% of that amount;
- on January 12, 2020 the Tenant first advised the Landlord of her intent to end the tenancy, although she did not provide a specific end date;
- on January 31, 2020 the Tenant gave written notice that the tenancy would be ending on February 29, 2020;
- the Tenant vacated the rental unit on February 07, 2020; and
- the co-tenant vacated the unit on February 29, 2020.

The Landlord is seeking compensation, in the amount of \$2,550.00, in lost revenue. She stated that she was unable to re-rent the unit until July 01, 2020 and she is seeking compensation for lost revenue for March, April, and May of 2020. She stated that the co-tenant has paid \$2,550.00 in lost revenue and she is now seeking the remaining lost revenue from the Tenant.

The Landlord stated that on January 12, 2020 she began advertising the rental unit on several websites and other locations. She posted two simultaneous advertisements, one of which advertised the rent at \$1,900.00 and one advertised the rent at \$1,700.00. She stated she removed the \$1,900.00 posting on February 21, 2020 and regularly updated the \$1,700.00 postings. She stated that she was able to re-rent the unit on July 01, 2020.

The Tenant stated that it was “questionable” that it took so long to re-rent the unit and that it is unfortunate this vacancy occurred during the COVID-19 pandemic. She stated that on February 06, 2021 she located the advertisement on the rental unit on a popular website and noted that the unit was advertised for \$1,900.00.

The Tenant submitted a text message, dated February 06, 2020, in which the Tenant asks the Landlord if the unit has been advertised on a popular website for \$1,900.00. The Landlord replied that the unit had been advertised for that amount “as per market value”.

The Landlord is seeking compensation, in the amount of \$211.72, for unpaid utilities. The Landlord provided a list of gas, electric, and utility charges which total \$651.70. The Landlord calculated that the Tenants owe \$423.44 of these charges. She stated that the co-tenant has paid 50% of the charges and she is seeking to recover the other \$211.72 from the Tenant. She stated that all of these charges were for period when the Tenants were no longer occupying the rental unit.

The Tenant agrees that she has not paid any of the utility costs referenced above.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on May 31, 2020 and that she was jointly responsible for paying monthly rent of \$1,700.00.

I find that the Tenant did not comply with section 45(2) of the *Residential Tenancy Act (Act)* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I find that the premature end to this fixed term tenancy resulted in a loss of revenue for the Landlord, in the amount of \$5,100.00, although she has already recovered \$2,550.00 of that lost revenue from the co-tenant. I find that the Landlord would not have experienced this lost revenue if the tenancy had continued to May 31, 2020.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant’s non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. When a landlord applies for compensation for lost revenue, the

Landlord bears the burden of providing that the rental unit was advertised in a reasonable and timely manner.

I find that the Landlord has submitted insufficient evidence to corroborate her testimony that she advertised the rental unit at any time for \$1,700.00. In reaching this conclusion I was influenced, in part, by the fact the Landlord did not submit a copy of an advertisement showing the amount of rent. Although the Landlord submitted a large amount of evidence to establish that people responded to her advertisements, I find it notable that she did not submit any evidence that shows the advertised rental amount.

In concluding that the Landlord submitted insufficient evidence to corroborate her testimony that she advertised the rental unit at any time for \$1,700.00 I was influenced, in part, by Tenant's testimony that on February 06, 2021 she located the advertisement on the rental unit on a popular website and noted that the unit was advertised for \$1,900.00. In a text message, dated February 06, 2020, the Tenant asked the Landlord if the unit has been advertised on a popular website for \$1,900.00. I find that the Landlord's response that it had been advertised for that amount "as per market value" establishes that it was advertised for \$1,900.00 at that time. I find that the Landlord's failure to inform the Tenant that it was also advertised in other locations for \$1,700.00 does not support the Landlord's testimony that it was simultaneously advertised on other sites for \$1,700.00, as I would expect the Landlord to provide that information if it was true.

In the absence of evidence to support the Landlord's testimony that the rental unit was advertised for \$1,700.00 in other locations prior to March 01, 2021 and the evidence that shows she advertised the rental unit for \$1,900.00 on one of the most popular websites for \$1,900.00, I find that the Landlord has failed to establish that she mitigated her lost revenue. Had the Landlord advertised the rental unit on this popular website for \$1,700.00, rather than \$1,900.00, I find it entirely possible that Landlord would have been able to secure a new tenant for March 01, 2020 and she would not, therefore, have experienced, lost revenue.

I find that the delay in advertising the rental unit for \$1,700.00 on this very popular website may have had a very significant impact on her inability to find a new tenant for March 01, 2020. As the Landlord failed to establish that she failed to properly mitigate the lost revenue she experienced, I dismiss her claim for lost revenue.

Even if I concluded that the Tenants were obligated to pay 67% of the utility bills until the end of the fixed term of the tenancy, I would conclude, for the reasons previously explained, that the Landlord did not properly mitigate those losses. I therefore dismiss her claim for unpaid utilities.

I find that the Landlord failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss her application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 20, 2021

Residential Tenancy Branch