



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BentallGreenOak (Canada)LP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, 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, 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

While the landlord's agent, CL ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 1:41 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was 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's agent and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood

The landlord testified that the tenants were served with the original application and hearing package by way of registered mail to the forwarding address provided by the tenants on May 21, 2021. The landlord served the tenant with a second evidence package on October 19, 2021 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with these packages, 5 days after mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent, money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

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 October 1, 2020, and was to end on September 30, 2021. Monthly rent was set at \$2,195.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,097.50, which the landlord still holds.

On January 23, 2021, the tenants gave notice that they would be vacating the rental unit early, and moved out on February 19, 2021. The landlord is seeking a monetary claim for the lost rental income for the months of March and April 2021 as they were unable to fill the vacancy for these months despite attempts to do so. The landlord submitted copies of the correspondence between the parties, as well as the ledger showing that the March and April 2021 rent had not been paid.

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 tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants 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 tenants. The tenants moved out earlier than the date specified in the tenancy agreement. I find that the landlord made an effort to mitigate the tenants' exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*, and were able to find new tenants for the remainder of the fixed term of May 2021 through to September 2021, but suffered a loss of rental income for March and April 2021 due to the early end of the tenancy. I, therefore, allow the landlord's monetary claim for loss of rental income for the months of March and April 2021.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,097.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,392.50 in the landlord's favour under the following terms which allows a monetary award for losses associated with the tenant's failure to comply with the *Act* and recovery of the filing fee.

Item	Amount
Loss of Rent for March and April 2021	\$4,390.00
Filing Fee	100.00
Less Security Deposit Held	-1,097.50
Total Monetary Order	\$3,392.50

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 10, 2021