Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution on May 14, 2021 seeking an order for recovery of unpaid rent, and other monetary loss. Additionally, they applied for the cost of the hearing fee.

The matter proceeded by way of a hearing on November 15, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to the tenant, and the tenant confirmed they received that package.

The evidence from the tenant was submitted to the Residential Tenancy Branch on November 8, 2021. This is 6 days in advance of the hearing on November 15. The landlord stated they had difficulty with the attachments the tenant sent to them via email.

The *Residential Tenancy Branch Rules of Procedure* cover procedures on either party serving evidence to the other:

- 3.15: the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing

- 3.17: the arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice

I accept the landlord's statement that they advised the tenant of this hearing in May 2021. This is the same month in which they applied. I find the tenant had knowledge of this hearing, receiving notice soon after the landlord applied. The tenant had the months June through October to prepare and serve evidence in response to the landlord's claim. They were not able to do so in a timely manner. The landlord now has difficulty with the attachments to an email from the tenant. I find any reliance on this evidence is prejudicial to the landlord, where they did not have a fulsome opportunity to review what the tenant provided prior to the hearing.

The tenant responded that their parents had medical issues which required their own attention and care. They were not clear on the details, such as dates or the real challenge this posed. I weigh this against the length of time involved, which is at least 5 months in total.

I decline to consider this evidence from the tenant, as per Rule 3.17. I consider what the tenant provided in the hearing by way of their affirmed testimony; that in itself stands as evidence in response to the landlord's claim for compensation. I made this point explicit to the parties at the start of the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for compensation for damages, and other monetary loss, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. The tenant signed this agreement on July 10, 2020, and the tenant signed on July 21. The tenancy started on August 1, 2020 for a fixed term ending on July 31, 2021. The monthly rent was $1,695 per month. The tenant paid a security deposit of $847.50.

Clause 31 sets out the agreement terms regarding ending the tenancy. This is "The tenant . . .giving the landlord at least one month's written notice." In addition, clause 5 is a specific provision on liquidated damages:

> If the tenant ends this tenancy agreement in less than 12 months from the start of this tenancy agreement, the tenant agrees to pay $500 as a genuine pre-estimate of the landlord's costs for re-renting the unit, which costs include advertising and administration. The tenant agree(s) that the liquidated damages fee is due and payable at the time they give notice of their intention to end this agreement prior to the date originally agreed to.

The landlord in the hearing pointed out specifically that the tenant initialled beside this clause in the agreement, indicating they knew of this clause.

In this tenancy, the tenant advised the landlord of its end in mid-April. They sent an email initially on April 14 to inquire on what process to follow, and their costs to cancel early. The tenant advised they "would be happy to look for a tenant immediately to ideally move in at the end of this month April 2021."

In response to this, the landlord advised of two options:

1. a "Late Vacate Notice" which makes the tenant responsible for May 2021 rent in full, and also the $500 liquidated damages as shown in the agreement
2. "Notice to Vacate": allows the tenant to provide the required 30-day notice, to the end of May, allowing the landlord to get the unit rented for June occupancy. The tenant would also be responsible for paying the $500 liquidated damages.

They added further clarification to the tenant: they advised they may not be able to rent it for May, with the tenant's notice coming in the middle of the month prior. "Providing late notice limits the time we could have to rent it"; however, if rented for mid-May, the tenant would have that ½ amount returned to them.

The tenant completed a "Late Vacate Notice" document, signed April 15, 2021. In the hearing, the landlord testified the tenant forwarded this document to them on April 16. This was their notice to vacate for the end of April. The document contains a statement of acknowledgement that the notice is late, not complying with the required one-month notice under the *Act*. This also contains – verbatim – the exact phrase:

> I agree to be responsible for any rent payable to the last day of May, 2021 if the suite is aforesaid is not re-rented to another tenant. The Landlord will make all reasonable attempts to re-rent the

> suite after the receipt of this notice of termination by the tenant. I agree to allow [the landlord] to retain the security deposit for outstanding rent.

The landlord also included an agreement signed by the tenant for a storage locker space. Starting on October 1, 2020, the tenant was to pay $25 per month. Section 5 of this agreement states: “I agree that if the storage locker/unit is no longer required, one full calendar months; notice must be given to the Landlord or its Agent, *in writing*. This policy is strictly enforced.” The agreement also sets out that if a tenancy is ending, the storage space agreement ends as of the same date as that tenancy.

The landlord claims compensation for the month of May full rent ($1,695), the liquidated damages ($500) and the storage rental fee ($25).

The tenant responded to the landlord’s claim, chiefly to question the amount of effort by the landlord in order to have the unit re-rented to new tenants for the month of May. In the hearing, the tenant stated they did not discover the ad for the rental unit posted online until 5 days after they gave their notice to the landlord, and this was not the most effective online marketplace available. As they observed online, the ad for the unit (through alternate online ads) was on the 20th, then removed and re-posted on the 22nd. It was not until the following month that the landlord utilized the most efficient marketplace available, on May 1st or May 2nd. In sum, the tenant stated: “If the landlord had tried to re-rent, there would have been no rent [for May].”

The tenant gave further detail in the hearing. A similar unit in the building re-rented within 5 days. Their individual rental unit never appeared on the landlord agent’s own site. The ad that was online had the wrong location on the map. They also question the true meaning of a liquidated damages clause in the agreement when this, at most, would represent one hour of work by the landlord. Their basic point on this is that the $500 amount is too high.

The landlord then responded to singular points of what the tenant stated in the hearing. There are no single units posted on the agent’s own website because this would incur a cost to the owner. The other unit renting within 5 days was for the month of June as a starting date. The landlord reiterated that the original ad went online on April 19, as shown in their own evidence.

The landlord also set out what the work on re-renting a unit involves. This is including time posting ads, the admin time, communication, an application process and review and a credit check for prospective tenants.

Analysis

From the testimony of the parties, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the paid security deposit.

The *Act* s. 45 covers how a tenant may end a fixed-term tenancy. It provides that a date shall not be earlier than one month after the landlord receives the notice and is not earlier than the end-of-tenancy date in the agreement. Here, the tenant did not advise the landlord in a timely fashion as the law requires. For this reason, and with a strict adherence to the *Act* (as reflected in the tenancy agreement), I find the landlord is entitled to the amount of May rent for $1,695. The tenant is legally obligated to pay this amount of rent.

I find the agreement wherein the landlord offered to re-rent the unit as soon as possible to new tenants is a courtesy, whereby the landlord is acting in the spirit and purpose of the *Act* in minimizing the amount of monetary loss. This principle is set out in s. 7(2) of the *Act*. I find there is no question the landlord was diligent in advertising the rental unit – with accurate information – as soon as possible after they received the notice from the tenant.

What the tenant presented in the hearing does not outweigh what the landlord presented: this was the agreement that was in place between the parties. This is two-fold: the original tenancy agreement, the relevant clauses set out above; and the 'Late Vacate Notice'. The latter document set out the tenant's consent to the arrangement, setting out plainly that they agree to pay rent payable for May. I find in these circumstances, as stated in the document, the landlord made "all reasonable attempts to re-rent the suite" where the tenant provided the late notice to the landlord on April 16. I find that is a narrow timeframe to ensure rental for the following month.

Additionally, there was no testimony from the tenant that they made any effort to look for tenants on their own. This was what they proposed to the landlord when asking about their options on April 14, 2021: "Either way I'll be happy to look for a tenant immediately to ideally move in at the end this month April 2021." This would normally be a means of ensuring their own losses were minimized, in light of what the tenancy agreement sets out, in line with the *Act*.

Based on what the landlord presented in the hearing, I find there is a framework in place when it comes to the need to re-rent a unit. They listed tasks involved in this process.

In this case, there was an even shorter timeframe in which to get the tasks completed. This necessarily involves consultation with the owner, and I agree there are a set of admin tasks that displace other work the landlord may be carrying out at that time. This was to accommodate late notice from the tenant. This includes preparing the rental unit, ensuring it is suitable for rental, as well as the tenant application process. Contrary to what the tenant here stated, this is not work that can be accomplished in one hour.

I find $500 is a genuine pre-estimate of the work involved, here claimed as liquidated damages. The tenant signed to this in the agreement, specifically initialling that clause. For these reasons, I award $500 for this portion of the landlord's claim.

As above, there was an agreement in place for the storage space. The terms that the tenant agreed to are set out above. In keeping with the terms of that agreement, I award the $25 storage rental fee to the landlord.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord properly made a claim against the security deposit within the timeline set in the *Act*. The landlord has established a claim of $2,220. After setting off the security deposit amount of $847.50, there is a balance of $1,372.50. I am authorizing the landlord to keep the security deposit amount and award the balance of $1,372.50 as compensation for amounts owing as claimed.

As the landlord is successful, I find that the landlord is entitled to recover the $100 filing fee paid for this application.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $1,472.50. The landlord is provided with this Order in the above terms and the tenants must be served with **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 s. 9.1(1) of the *Act*.

Dated: November 18, 2021

Residential Tenancy Branch