



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

Tenant AG was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on August 13, 2021, to the forwarding address provided by Tenant AG. Tenant KC was served with the Hearing Package by registered mail to the dispute unit address. Both Tenants had moved out of the unit.

Section 89(1) of the Act provides that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(f)by any other means of service provided for in the regulations.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that Tenant AG is deemed to have received the Hearing Package on August 18, 2021. As the Landlord did not serve the Hearing Package to Tenant KC through any of the means allowed, I dismiss the Landlord's application in relation to Tenant KC.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on February 1, 2021, to end January 31, 2022. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit. On June 22, 2021, the Tenants gave notice to end the tenancy for July 31, 2021, and the Tenants moved out on July 8, 2021. Rent of \$1,700.00 was payable on the first day of each month. The Tenants paid no rent for July 2021. The Tenants agreed in writing on the move-out report that the Landlord could retain the security deposit. The Tenant AG provided their forwarding address on the move-out report dated July 8, 2021.

The Landlord seeks to retain the security deposit against unpaid July 2021 rent and claims the remaining unpaid rent for July 2021 of \$850.00.

On or about July 1, 2021, the Landlord advertised the unit online for the same rental rate. By the end of July 2021, the Landlord reduced the advertised rent to \$1,500.00 and a new tenancy agreement was signed on August 20, 2021, for the same tenancy start date at that monthly rate.

Analysis

Section 44(1)(d) of the Act provides that a tenancy ended when the tenant vacates or abandons the rental unit. No further rent is payable when a tenancy ends. Based on the agreed facts that the Tenants moved out of the unit on July 8, 2021, and the agreed facts that no rent was paid for July 2021 I find that the Landlord is entitled to unpaid rent for 8 days in the amount of **\$438.72**. I base this calculation on a per diem rate of \$54.84 ($1700/31 = 54.84$).

Section 54(2) of the Act provides that 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.

Based on the undisputed evidence that the Tenants ended the fixed term tenancy agreement before the end of the term I find that the Tenants breached the above section of the Act.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is

reasonable to minimize the damage or loss. Based on the Landlord's undisputed evidence of advertising I find that the Landlord acted reasonably to mitigate their claim to lost rental income arising from the Tenants' breach of the fixed term. Given the Landlord's undisputed evidence that the next tenancy started on August 20, 2021, I find that the Landlord has substantiated an entitlement to lost rental income of **\$1,261.28** for the period July 9 to 31, 2021 inclusive and **\$1,041.96** for the period August 1 to 19, 2021 inclusive.

As the Landlord has been successful with their claims, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,841.96**. Deducting the security deposit plus zero interest of **\$850.00** from the entitlement leaves **\$1,991.96** owed to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$850.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,991.96**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: February 09, 2022

Residential Tenancy Branch