



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

On July 23, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing. The Tenant also attended the hearing, with J.Z. attending as her translator. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant his Notice of Hearing and evidence package by registered mail on August 11, 2021, and the Tenant confirmed that she received this package. Based on this undisputed testimony, I am satisfied that the Tenant has been duly served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and it will be considered when rendering this Decision.

The Tenant advised that she did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 24, 2021 as a fixed term tenancy ending on November 30, 2021. Both parties were difficult to understand and there appeared to be some sort of tenancy between the parties prior to when this tenancy agreement was signed. It seemed as if the Tenant had rented the unit prior to this date for the use of tradespeople that were in her employ.

Regardless, the tenancy that is the subject of this dispute ended when the Tenant gave up vacant possession of the rental unit somewhere between late July 2021 to mid-August 2021. They agreed that rent was established at \$2,850.00 per month, that it was due on the 24th day of each month, and that a security deposit was not paid despite the tenancy agreement indicating that one was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Tenant paid rent for June 2021, but she phoned him on July 20, 2021 to tell him that she would be unable to rent the unit any longer. Consequently, the end of tenancy would be August 1, 2021. Once he received the keys back in mid-August 2021, he was able to secure a new Tenant for September 1, 2021. As such, he is seeking compensation in the amount of the rental loss up until September 1, 2021, because the Tenant ended the tenancy with verbal notice on July 20, 2021 and gave up vacant possession of the rental unit.

As well, he indicated that he is seeking compensation in the amount of **\$75.00** for the estimated amount of utilities owed by the Tenant for the duration of the tenancy. He submitted that the tenancy agreement required the Tenant to pay for the utilities, and he referenced an invoice provided as documentary evidence to support this position.

Through her translator, the Tenant advised that the Landlord provided her with a key to the rental unit. However, she did not move into the rental unit as a “friend” of hers told her that the unit was still occupied, and that she would get into trouble if she did. She acknowledged that she did not check for herself to see if this was in fact the case, despite having a key to the rental unit. She made some references to the people in the rental unit being “workers”, but it was not clear what she meant. She testified that she only contacted the Landlord approximately two weeks after the tenancy was supposed to start about the rental unit being occupied. While she alleges that she sent a Whatsapp message to the Landlord on July 18, 2021, she acknowledged that she did not give the Landlord any written notice to end her tenancy pursuant to the *Act*. In addition, she did not submit any documentary evidence to corroborate any of her claims.

With respect to the utilities, she stated that she gave the Landlord a cheque for utilities at the start of the tenancy; however, she did not provide any documentary evidence to support this.

The Landlord advised that to his knowledge, there was no one occupying the rental unit that would have prevented her from moving in. As well, he stated that the Tenant never informed him at any point that there were people living in the rental unit and that she was unable to move in. Moreover, he attempted to explain some sort of arrangement prior to the tenancy agreement where the Tenant had actually been renting the unit to her tradespeople, and that it’s possible that her own tradespeople could have continued to occupy the rental unit when her tenancy was supposed to start. However, these submissions were not clear, and it was evident that neither party knew exactly what the scenario was.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for almost six months, starting on June 24, 2021. Yet the tenancy effectively ended when Tenant gave up vacant possession of the rental unit on or around August 1, 2021 or later. Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

While the Tenant claimed that she could not even move into the rental unit on June 24, 2021 because it was occupied by someone else, I note that she provided no documentary evidence to corroborate this claim. Furthermore, she stated that she relied on this information that was provided to her by a "friend". However, if this were in fact the case, it does not make any logical sense why she would not investigate by going to the rental unit to determine if this was even true.

Moreover, had this in fact been the case, she stated that she did not even contact the Landlord about this issue until two weeks after the tenancy started. I do not find it consistent with common sense and ordinary human experience that if Tenant rented the unit and was unable to move in, that she would wait two weeks to inform the Landlord of such. I find that these inconsistencies cause me to doubt the credibility, reliability, and truthfulness of the Tenant's submissions. As such, I prefer the Landlord's evidence on the whole.

Regardless, based on the Tenant's own admission, she did not give any written notice to end the tenancy. As such, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord could have suffered a rental loss. As the Tenant provided verbal notice and gave up vacant possession of the rental unit shortly thereafter, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been provided with minimal notification that the Tenant would be giving up vacant possession, and as this was done at the end of the month, I am satisfied that the Landlord was put in a position that it would have been difficult to re-rent the unit immediately. Given that the Tenant gave such short notice, I do not find it would have been realistic for the Landlord to have found a suitable tenant in such a short amount of time. As a result, I am satisfied by the evidence presented that he made sufficient attempts to re-rent the unit as quickly as possible, after the Tenant gave up vacant possession of the rental unit, and was successfully able to do so fairly readily. Consequently, I grant the Landlord a monetary award for July 24 – August 23, 2021 in the amount of **\$2,850.00**, and August 24 – August 31, 2021 in the pro-rated amount of **\$749.59** (calculated as $\$2,850.00 \times 12 \text{ months} / 365 \text{ days} \times 8 \text{ days}$).

With respect to the Landlord's claim for \$75.00 for the utilities owed, I prefer the Landlord's affirmed testimony and documentary evidence of an invoice for utility charges over the Tenant's questionable and dubious testimony. As such, I grant the Landlord a monetary award in the amount of **\$75.00** to satisfy this debt.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| | |
|-----------------------------|-------------------|
| July 2021 rent | \$2,850.00 |
| August 2021 pro-rated rent | \$749.59 |
| Utilities | \$75.00 |
| Recovery of filing fee | \$100.00 |
| TOTAL MONETARY AWARD | \$3,774.59 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,774.59** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: February 7, 2022

Residential Tenancy Branch