



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 as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$5,000.00, as amended; and to recover the \$100.00 cost of their Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents and her evidentiary submissions by text, sent on September 15, 2021. The Landlord was authorized by the RTB to effect service in this manner. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she confirmed this in the hearing, and she provided an email address for the Tenant in the hearing, as well. The Landlord confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord provided a tenancy agreement, which said that the Parties' fixed-term, year-long tenancy began on April 1, 2021, with a monthly rent of \$2,000.00, due on the first day of each month. The Landlord said that the Tenant paid her a security deposit of \$1,000.00, and no pet damage deposit. The Landlord holds the security deposit to apply to her claims.

In the hearing, the Landlord said that on August 1, 2021, the Tenant told her that she was moving out that month, and that she did not plan on paying any more rent. The Landlord said she told the Tenant that this is insufficient notice to vacate that month and that she still owed the Landlord the rent.

The Landlord said that she advertised, and she submitted copies of these advertisements for a new tenant. However, the Landlord said she was unable to find anyone until the middle of October 2021. Accordingly, the Landlord is claiming unpaid rent from the Tenant for August, September, and half of October, totalling \$5,000.00.

Date Rent Due	Amt Owing	Amt Received	Amt. Owing
Aug. 2021	\$2,000.00	\$0.00	\$2,000.00
Sep. 2021	\$2,000.00	\$0.00	\$2,000.00

Oct. 2021	\$1,000.00	\$0.00	\$1,000.00
Application filing fee	RTB	\$100.00 from Landlord	\$100.00
	TOTAL		\$5,100.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I should her know how I would be analyzing the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Termination of the Fixed Term Tenancy

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. The Tenant was bound by her signature on the tenancy agreement.

Section 7(1) of the Act states that if a landlord or a tenant does not comply with the Act, regulation or tenancy agreement, the non-compliant party must compensate the other for the damage or loss that results. Section 67 of the Act authorizes me to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45 (2) deals with ending a fixed term tenancy, as follows:

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.

As set out in Policy Guideline #16 ("PG #16"), "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

In this case, the undisputed evidence before me is that the Tenant breached the fixed term tenancy agreement by providing a notice to end the tenancy as of August 31, 2021, which notice was provided on August 1, 2021. The Landlord said that the tenancy was not scheduled to end until March 2022. She said that the Tenant did not pay rent for August 2021.

However, under the Act, the Tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement, which was March 31, 2022. I find the Tenant breached section 45 (2) of the Act, as the earliest date they could have legally ended the tenancy was on March 31, 2022.

I find that the Landlord did what she could to mitigate the loss incurred from the early end to the fixed term tenancy. The Landlord found new tenants for October 15, 2021, for the same rent as the Tenants had agreed to pay. Given the very short notice of the end of the tenancy, I find it would be unreasonable to expect the Landlord to find new tenants for August 1, 2021, especially since the Tenant was still living there in August 2021.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a

portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find that the Landlord mitigated her claim by advertising for a new tenant for the rental unit; however, she was unable to find a new tenant until mid-October 2021. Accordingly, I find that the Tenant breached the Act by ending a fixed-term tenancy early. I find that the Landlord established that she lost rental income for two and a half months, due to the Tenant’s illegal action. The Landlord has shown that the rent was \$2,000.00 per month, and therefore, that she lost a value of \$5,000.00 in unpaid rent from August through October 15, 2021.

When I consider the evidence before me overall, I find that the Landlord has proven that the Tenant breached the Act and tenancy agreement by ending the fixed term early. Further, I find that the Landlord has established that the Tenant’s act in this regard caused the Landlord to lose rental income, because she could not re-rent the rental unit until October 15, 2021. I find that the Landlord established the value of her losses at \$5,000.00, plus the \$100.00 Application filing fee she had to pay for this proceeding.

I find that the Landlord has met her burden of proof on a balance of probabilities in this matter, and therefore, I award the Landlord with **\$5,000.00** in unpaid rent from the Tenant in this matter, pursuant to sections 26, 45, and 67 of the Act. I also award the Landlord with recovery of her **\$100.00** Application filing fee for a total award of \$5,100.00.

I authorize the Landlord to retain the Tenant’s **\$1,000.00** security deposit in partial satisfaction of these monetary awards. I grant the Landlord a Monetary Order from the Tenant of **\$4,100.00** for the remaining amount of the awards owing after deducting the security deposit from the total.

Conclusion

The Landlord is successful in her Application for compensation from the Tenant, as she provided sufficient evidence of her claims on a balance of probabilities. The Landlord is awarded **\$5,000.00** from the Tenant for recovery of lost rental income. The Landlord is also awarded recovery of her **\$100.00** Application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant’s **\$1,000.00** security deposit in partial satisfaction of the monetary awards. The Landlord is granted a Monetary Order of **\$4,100.00** for the remainder of the monetary awards owed by the Tenant to the

Landlord. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 08, 2022

Residential Tenancy Branch