



Dispute Resolution Services

Page: 1

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

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord's agent gave the following testimony. AC testified that the tenancy was to be a one year fixed term tenancy that was to commence on November 1, 2021. AC testified that on October 25, 2021 the tenant advised that she would not be moving into the unit. AC testified that initially, the tenant attempted to rent the unit herself and provided possible applicants, but each of them wanted it for December 1, 2021. AC testified that on October 29, 2021 the tenant signed a document confirming that she was reneging on the original agreement.

AC testified that she posted the unit immediately on their website and other mediums to rent the unit. AC testified that the landlord undertook; postings, fielding calls, issuing and processing applications and choosing a tenant. AC testified that she rented the unit for December 1, 2021. AC testified that she is seeking \$1995.00 in loss of rent for December 2021, liquidated damages of \$1000.00 as per the tenancy agreement and the recovery of the \$100.00 filing fee for a total claim of \$3095.00.

The tenant gave the following testimony. The tenant testified that she was in a difficult relationship at the time and was dealing with many issues. The tenant testified that she couldn't move in at the time as it would look bad for her husband's business if people knew they had separated.

Analysis

I find that the landlord and tenant entered into a fixed term tenancy for the period from November 1, 2021 to October 31, 2022. Both parties signed the written tenancy agreement, and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on October 25, 2022; before ever moving in. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the documentation before me, I find that the tenant did not provide the appropriate and sufficient notice as required under section 45. I further find that the landlord acted in accordance with section 7(2) of the *Act* to mitigate their losses by immediately posting an advertisement and making all reasonable efforts to re-rent the unit but, wasn't able to until December 1, 2021 through no fault of their own, accordingly; I find that the landlord is entitled to \$1995.00 for November 2021 rent.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the

time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. However, due to the tenant giving short notice, the landlord had to post advertisements, screen calls, arrange viewings, process applications and seek qualified applicants under less than ideal conditions. I find that the amount sought in liquidated damages is not unreasonable under these circumstances, accordingly; I grant the landlord \$1000.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$3095.00. I order that the landlord retain the security and deposits of \$1995.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1100.00. 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 *Residential Tenancy Act*.

Dated: May 31, 2022

Residential Tenancy Branch