Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26; and
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant BD (the tenant) and the landlord attended the hearing. The tenant represented tenant GC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

The tenant confirmed that both tenants received the notice of hearing and the landlord’s evidence (the materials) and that both of them had enough time to review the materials. I find the landlord served the materials in accordance with section 89(1) of the Act.

The tenant did not serve the response evidence. Per Rule of Procedure 3.15, I excluded the tenant’s response evidence.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord purchased the rental unit on November 24, 2021.

Both parties agreed the tenant and the seller entered into a fixed-term tenancy from August 24, 2021 to August 31, 2022. Monthly rent of $1,600.00 was due on the first day of the month. At the outset of the tenancy a security deposit of $800.00 and a pet deposit of $800.00 were collected and the landlord returned both of them. The tenancy agreement was submitted into evidence.

The parties agreed to reduce the rent to $1,500.00 in the second month of the tenancy.

The tenant vacated the rental unit on November 26, 2021 prior to the end of the fixed term.

The landlord claims for loss of rental income in the amount of $1,500.00 for December 2021 rent.

Both parties agreed the tenant provided verbal notice to end tenancy on November 04, 2021 and the landlord started advertising the rental unit on November 04 or 05, 2021, asking for $1,500.00. The landlord texted the tenants on November 04, 2021:

> A fixed term tenancy can't be ended unless both agree in writing, so the 30 vs 60 days doesn't even apply since it can't be ended unless we agree. If I am unable to rent out the property (within reason but being over the holidays it could be tough) then I do have the right to submit a dispute for loss of rent form you guys

The landlord was able to re-rent the unit for the same amount of rent on November 28, 2021 for a tenancy starting on January 08, 2022. The landlord received inquires from other potential tenants, but only one tenant applied. The landlord did not receive rent for December 2021.

The tenant affirmed he terminated the tenancy because he expected the seller or the landlord would occupy the upper floor rental unit during his tenancy. The tenant learned the landlord planned to rent the upper floor and gave notice to end tenancy. Both parties agreed there was no agreement requiring the landlord or the seller to occupy the upper floor rental unit.

The landlord submitted into evidence a monetary order worksheet indicating a claim in the total amount of $1,600.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the testimony of both parties and the tenancy agreement, I find the tenants were aware the tenancy was for a fixed term ending on August 31, 2022 and the tenants ended the tenancy early on November 26, 2021.

The tenant submits that he ended the tenancy early because he expected the landlord to occupy the upper floor rental unit.

Section 45(3) of the Act states if a landlord fails to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord received the notice.

Residential Tenancy Branch Policy Guideline 8 states the tenant must give the landlord a deadline related to the breach of the material term:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I accepted the uncontested testimony and the tenancy agreement that there was no clause requiring the landlord to occupy the upper floor rental unit.

Thus, I find the tenants breached the fixed term tenancy agreement and section 45(2) of the Act, which states:

> (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a)is not earlier than one month after the date the landlord receives the notice,
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> **(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy,** and
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> (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 uncontested testimony, I find that as a consequence of the tenant ending the tenancy contrary to the Act the landlord suffered a loss of rental income for the month of December 2021.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

> The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.
> […]
> In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, Policy Guideline 5 states:

> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.
> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the November 04, 2021 message, I find the landlord warned the tenants that they are liable for loss of rental income for December 2021.

The tenants provided less than 30 days notice of vacating the rental unit. The provision of 30 days notice is the minimum amount of notice required for a periodic tenancy under section 45(1) of the Act. I find it is reasonable for the landlord to take 30 days to find a new tenant. Furthermore, from November 05 to 28, 2021, only one potential tenant applied for rent. In accordance with section 7 and 67 of the Act, and considering Policy Guidelines 3, 5 and 16, I find the tenants are responsible for the loss of rental income from December 01 to 31, 2021 in the amount of $1,500.00.

As the landlord was successful in this application, I find the landlord is entitled to recover the $100.00 filing fee.

In summary:

Loss of rental income from December 01 to 31, 2021	$1,500.00
Filing fee	$100.00
Total awarded:	$1,600.00

Conclusion

Pursuant to sections 7, 67 and 72 of the Act, I grant the landlord a monetary order in the amount of $1,600.00.

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 15, 2022

Residential Tenancy Branch