



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issue

At the outset of the hearing the landlord requested to amend their claim for subsequent loss of rent. I find that would be highly prejudicial to the tenants as the landlord had not listed this in their application and had sufficient time to amend their claim prior to the hearing. Therefore, I do not allow the landlord’s claim to be amended.

Issues to be Decided

Are the landlords entitled to a monetary order for loss of rent?

Are the landlords entitled to keep the security deposit and pet damage deposit to offset the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on April 1, 2021 and was to expire on March 31, 2022. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 (the "Deposits"). The tenancy ended on November 30, 2021.

The landlord's agent testified that the tenants breached the fixed term agreement as they gave notice to end the tenancy on October 7, 2021, with an effective date of November 30, 2021. The landlord's agent testified that they advertised the rental unit on two popular websites. The landlord's agent stated that they had at least 50 enquiries of those 3 to 5 applicants and may one to three qualify. The landlord stated that in December 2022 they accepted a suitable tenant; however, the new tenant had to give their own notice to end their tenancy and the earliest the tenancy could begin was February 1, 2022.

The landlord's agent stated that renting a unit for December 2021, is the least desirable time as most tenants do not want to move during this time and it was more difficult due to COVID.

The tenant testified that they did end the tenancy earlier than the tenancy was allowed; however, they do not believe the landlord took reasonable efforts to mitigate the loss.

The tenant testified that that on November 29, 2021 they conducted their own search of the unit to ensure it was advertised and were only able to locate the property on the property managers corporate site, and one other website. The tenant stated that the corporate site was not located in the first 10 pages of the Google results. The tenant stated that the other website incorrectly listed the address, as it shows the corporate office address, and this is 32km from the rental unit. The tenant stated they completed the search again on December 13, 2021, and the searches were again identical. The tenant stated that they also searched another popular website as they were informed it was also advertised on this site; however, they found no such listing.

The landlord's agent argued that they advertised the rental unit on two websites within a few days of the tenants giving notice to end the tenancy. The agent stated that one was on their corporate site and the other on a popular website. The agent stated that the rental unit was listed for the area to which the rental unit is located. The agent stated that it is not uncommon that they list the corporate address and not the address of the

rental unit for privacy issues. The agent stated that the other sites the tenant has referred to they do not use.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

In this case, the evidence of both parties was that the tenants gave notice to end the tenancy on October 7, 2021, with an effective date of November 30, 2021. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was March 31, 2022, as stated in the tenancy agreement.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord supports that the rental unit was listed on two websites. One was on the corporate site and the other one was a popular website. While I accept the address of the rental unit was not identified on the popular website, as it showed the corporate address; however, I find this alone does not invalidate the landlords attempt to rent the rental unit, as it does provide the geographical location, and any interested renter could have contacted the landlord. Under the Act the landlord is only required to take reasonable steps by advertising the rental unit, which was done on two websites, not that they must exhaust every site available.

The tenant could have also made attempts to advertise the rental unit on behalf of the landlord if they wanted the rental unit to be posted on additional sites. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for December 2021 in the amount of **\$2,500.00**.

I find that the landlord has established a total monetary claim of **\$2,600.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$2,500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 22, 2022

Residential Tenancy Branch