



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords December 31, 2021 (the “Application”). The Landlords applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Landlords appeared at the hearing with the Translator. The Tenant appeared at the hearing and appeared for Tenants C.L.H. and R.X.L. Tenant C.L.H. was involved in the hearing at some points. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I confirmed service of the hearing package and Landlords’ evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought \$650.00 in unpaid rent and \$5,200.00 for loss of rent.

The parties agreed on the following. There was a written tenancy agreement between them. The tenancy started March 05, 2020, and was for a fixed term of one year. Rent was \$1,300.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit.

The Landlords testified that the Tenants moved out of the rental unit July 15, 2020. The Tenant testified that the Tenants moved out of the rental unit August 16, 2020.

The Landlords testified as follows. The Tenants did not give one month's notice to end the tenancy. The Tenants did not pay rent for July 01 to 15, 2020.

The Tenant again testified that the Tenants did not move out of the rental unit until August 16, 2020. The Tenant could not remember when the Tenants paid rent until and agreed there is rent outstanding. The Tenant did not know how much rent is outstanding.

The Landlords further testified as follows. The tenancy was a fixed term tenancy. The Landlords only received verbal notice from the Tenants about ending the tenancy, never written notice. At the start of July, the Tenants told the Landlords they were moving out of the rental unit immediately. The Landlords posted the unit for rent July 18, 2020, and the advertisement is in evidence. The unit was posted for the same rent amount that the Tenants were paying. The unit was not re-rented until five months later due to the pandemic and it being difficult to find new tenants. The unit was re-rented for \$1,100.00.

The Tenant acknowledged the Tenants ended the tenancy. The Tenant testified that the Tenants verbally gave three month's notice ending the tenancy and the Landlords agreed to the this. The Tenant testified that the notice was given three months prior to August 16, 2020.

The Landlords submitted a screen shot and a tenancy agreement; however, neither are in English and therefore I am not able to read these.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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:

- 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The parties disagreed about when the Tenants moved out of the rental unit. I find it more likely than not that the Tenants moved out July 15, 2020. I find the Landlords are in a better position to recall when the Tenants moved out of the rental unit and when the Landlords had to start looking for new tenants because it involves possession of their own property.

The parties disagreed about when the Tenants gave notice ending the tenancy. I find it more likely than not that the Tenants gave notice at the start of July and moved July 15, 2020. I do not find the Tenant's recollection of events particularly compelling because the Tenant acknowledged the Tenants owe rent but could not recall how much rent is owing. Further, the Tenants were required pursuant to sections 45(4) and 52 of the *Act*, to provide written notice ending the tenancy. The Landlords were not required to accept verbal notice ending the tenancy. In the absence of the Tenants complying with the *Act* and providing written notice ending the tenancy, I accept the Landlords' testimony that they did not receive notice ending the tenancy until the start of July.

The Tenants were required pursuant to section 26(1) of the *Act* and the tenancy agreement to pay rent while they remained in possession of the rental unit. As stated, I find the Tenants remained in possession of the rental unit until July 15, 2020. I accept that the Tenants did not pay rent for July 01 to 15, 2020, because the Tenant acknowledged rent is outstanding and could not recall how much. The Tenant did not point to any authority under the *Act* to withhold rent. I find the Tenants owe the Landlords \$641.09 in unpaid rent ($\$1,300.00 \times 12 = \$15,600.00 / 365 = \42.72 per day $\times 15$ days = \$641.09).

In relation to loss of rent, there is no issue that the tenancy was for a fixed term ending March 05, 2021, because the parties agreed on this. Further, there is no issue that it is the Tenants who ended the tenancy because the parties agreed on this.

Section 45 of the *Act* states:

(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.

(3) If a landlord has failed 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 receives the notice.

(emphasis added)

The Tenants were not permitted to end the tenancy prior to March 05, 2021, unless section 45(3) of the *Act* applied. There is no evidence before me that section 45(3) of the *Act* applied. I find the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy and moving out July 15, 2020, prior to the end of the fixed term tenancy.

I accept that the Landlords lost rent from July 15, 2020, to March 05, 2021, given the Tenants' breach. There is no issue that rent was \$1,300.00 per month because the parties agreed on this.

The issue here is mitigation. I find five months to be a very long time to re-rent the unit, particularly in the area of the unit. I accept that the Landlords posted the unit for rent because they pointed to an advertisement in evidence about this and the Tenants did not dispute this evidence. However, I would expect to see further compelling evidence of why the unit was not re-rented for five months such as communications from prospective tenants, documentary evidence showing the Landlords took reasonable steps to show and re-rent the unit or documentary evidence showing the Landlords reduced the rent amount within a month or so of the rental unit not being re-rented. Providing one advertisement for the rental unit is not sufficient to prove the Landlords mitigated their loss when the rental unit sat empty for five months. In the circumstances, I award the Landlords one month of lost rent. I accept that the Landlords did take the step of posting the unit for rent within a reasonable time after the Tenants moved out and therefore are entitled to some compensation for loss of rent. I am not satisfied based on the evidence provided that the Landlords continued to take

reasonable steps to re-rent the unit and therefore decline to award the Landlords more than \$1,300.00.

Given the Landlords have been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords are entitled to \$2,014.09 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$2,014.09 and are issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: September 07, 2022

Residential Tenancy Branch