



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL FFL**

Introduction

This hearing was convened by way of conference call in response to the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Landlords seek:

- a monetary order for compensation for monetary loss or other money owed by the Tenant to the Landlords pursuant to section 67; and
- authorization to recover the filing fee of the Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:57 pm in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 pm. The two Landlords ("AM" and "IM") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that AM, IM and I were the only ones who had called into this teleconference.

IM stated the Landlords served the NDRP and their evidence (collectively the "NDRP Package") on the Tenant by registered mail on April 27, 2022. IM provided the Canada Post receipt and tracking number for service of the NDRP Package on the Tenant. When I asked where the Landlords obtained the Tenant's address for service of the NDRP Package, IM testified the Landlords used the address provided by the Tenant as her address at the time she signed the tenancy agreement. IM stated the Landlords called the Tenant's landlord at the time of service and verified with him that the Tenant was still residing at that address. Reference to the Canada Post tracking site reveals the NDRP Package was delivered on April 28, 2022. Based on the undisputed testimony of IM, I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

IM stated the Landlords did not receive any evidence from the Tenant for this proceeding.

Issues to be Decided

- Are the Landlords entitled to a monetary order for compensation for monetary loss or other money owed by the Tenant to the Landlords?
- Are the Landlords entitled to recover the filing fee of the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

IM submitted into evidence a copy of a tenancy agreement dated March 15, 2022 ("Tenancy Agreement") and an addendum dated March 22, 2022 ("Addendum"). The Tenancy Agreement states the tenancy commenced on May 1, 2022, with a fixed term ending October 31, 2022, with rent of \$3,000.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$1,100.00 to the Landlords by April 15, 2022. IM stated the Tenant did not pay the security deposit of \$1,100.00. The Addendum states, in part, that the Tenant is to pay \$100.00 per day from April 15, 2022 to April 30, 2022 in the event the Tenant moved into the rental unit prior to May 1, 2022.

IM stated the Tenant texted the Landlords on April 2, 2022 saying she was not taking the rental unit. IM submitted into evidence a copy of the text message to corroborate her testimony. IM testified the Landlords replied to the Tenant's text on April 7, 2022 and informed the Tenant that they would release her from the obligations under the Tenancy Agreement if they could find a replacement Tenant. IM stated the Tenant would not respond to their text messages after that time.

IM stated the Landlords were seeking \$1,500.00, being one-half of one month's rent, from the Tenant for compensation for loss of income as a result of the Tenant breaching the terms of the Tenancy Agreement until they re-rented the unit and \$500.00 for the value of the Landlords' time to find a replacement Tenant.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

- 7(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.
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 (“PG 16”) addresses the criteria for awarding compensation. PG 16 states in part:

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:

- 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlords must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

IM stated the Landlords and Tenant entered into the Tenancy Agreement on March 15, 2022. IM stated the Tenant texted the Landlords on April 2, 2022 saying she was not taking the rental unit. IM stated the Landlords found a replacement tenant commencing April 16, 2022. IM stated the Landlords were seeking \$1,500.00, being one-half of one month's rent, from the Tenant for compensation for loss of income as a result of the Tenant breaching the terms of the Tenancy Agreement and \$500.00 for damages to compensate them for their time to find a replacement Tenant.

Section 45 of the Act states:

- 45(1) A tenant may end a periodic 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, and
 - (b) 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.
- (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.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Tenancy Agreement stated the tenancy was for a fixed term of 6 months ending October 31, 2022. Based on the undisputed testimony of IM, I find the Tenant breached section 45(2) of the Act by ending the tenancy early. The Landlords did not submit a copy of the tenancy agreement ("New Tenancy Agreement") with the new tenant(s). Pursuant to an Interim Decision dated November 21, I ordered the Landlords to serve a copy of the New Tenancy Agreement, with the names of the new tenant(s) redacted from it, on the Tenant and to submit a copy of the New Tenancy Agreement to the Residential Tenancy Branch. I have reviewed the New Tenancy Agreement that is dated April 21, 2022. Contrary to the testimony of IM who stated the Landlords were

unable to re-rent the rental unit until May 15, 2022, the New Tenancy Agreement states the tenancy with the new tenant(s) commenced on May 1, 2022 with rent of \$3,000.00 per month. I prefer the terms stated in the New Tenancy Agreement over the testimony of IM respecting the commencement date of the new tenancy. As such, I find, based on the terms of the New Tenancy Agreement, that the Landlords re-rented the rental unit commencing on May 1, 2022.

Residential Tenancy Branch Policy Guideline 3 ("PG 3") provides guidance to Landlords who seek to hold a tenant liable for loss of rent after the end of a tenancy agreement. PG 3 states in part:

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. *It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.*

[emphasis in italics added]

The Tenant had the option, but not the obligation, to rent the rental unit from April 15 to 30, 2022 at \$100.00 per day. As such the Tenant is not liable for payment of any rent for that period. The tenancy with the Tenant was to commence on May 1, 2022 with rent of \$3,000.00 per month. The Landlords re-rented the rental unit to new tenant(s) commencing on May 1, 2022 for \$3,000.00. As such, the Landlords did not have any loss of rental income as a result of the Tenant breaching the terms of the Tenancy Agreement. As stated in PG 3, compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Based on the foregoing, I find the Landlords are not entitled to recover any compensation from the Tenant for loss of rental income. As such, I dismiss, without leave to reapply, the Landlords' claim for loss of rental income.

When a tenant breaches a fixed term lease, a landlord is entitled to recover the reasonable costs of re-renting the rental unit, such as advertising expenses and agency fees. However, a landlord is not entitled to recover the value of their time to find a replacement tenant. As such, I find the Landlords are not entitled to the \$500.00 they have claimed for the value of their time to find the replacement tenant. Based on the foregoing, I dismiss, without leave to reapply, the Landlords' claim for \$500.00 for the value of their time to find the replacement tenant.

As the Landlords have not been successful in any of the claims they made in the Application, I dismiss the Landlords' claim for reimbursement of the \$100.00 filing fee of the Application.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

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: December 6, 2022

Residential Tenancy Branch