



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for a monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38.

Both the landlord and the tenant attended the hearing. The tenant acknowledged service of the landlord’s Notice of Dispute Resolution Proceedings package and had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the tenant be required to compensate the landlord for ending the fixed term tenancy before the end date?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party’s evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on May 15, 2021, for a fixed term to end on May 31, 2022. Rent was set at \$3,100.00 per month, payable on the first day of each month. A security deposit of \$1,550.00 was collected by the landlord which she continues to hold.

The landlord gave the following testimony. On March 23, 2022, the tenant sent the landlord an email indicating she is ending the tenancy on May 1, 2022. The tenancy actually ended before May 1st as the tenant returned the landlord's key fobs and keys before the end of April. On May 2, 2022, the landlord received the tenant's forwarding address. The landlord filed the application for dispute resolution on May 5, 2022.

The landlord testified that she had told the tenant in January 2022 that she was planning on selling the unit but wasn't going to do it before the end of the fixed term. The landlord became aware that the tenant purchased a new condo and didn't insist the tenant stay until the end of the fixed term, May 31st. After being notified her tenant was ending the tenancy, the landlord decided to re-rent the unit instead of selling it and hired a rental agent to assist. The first ad was posted on May 2, 2022, and the landlord testified she found a tenant for October 1, 2022.

The tenant gave the following testimony. When she left the rental unit it was in perfect condition. The tenancy began on May 15, 2021, and she paid a half month's rent pro-rated before giving the landlord's rental agency eleven cheques ending on May 1, 2022. In her mind, the tenancy was ending on May 1st because that's all she had paid up to. She didn't realize the tenancy agreement indicated a May 31st end date. The tenant would like her security deposit returned to her.

Analysis

Section 1 of the *Residential Tenancy Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date.

Neither party may end a fixed term tenancy early, except under specific circumstances: for cause, by agreement of both parties, or an Early Termination for Family Violence or Long-Term Care.

Pursuant to section 44(1)(a)(i), a tenancy can end if a tenant gives notice to end the tenancy *in accordance* with section 45.

Section 45(2) states:

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.

I find that the tenant gave the landlord her notice to end tenancy on March 23, 2022, ending the tenancy on May 1, 2022. I find that the notice was given contrary to section 45(2)(b) since it had an effective date earlier than the date specified in the tenancy agreement as the end of the tenancy, May 31, 2022. The tenant breached the Act and the tenancy agreement by ending the tenancy early.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] provides guidance in situations where a tenant has breached a tenancy agreement or abandoned a rental unit. (excerpts below)

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. *Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;*
2. *Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

...

*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.** (emphasis added)*

In this case, I find the tenant ended the fixed term tenancy before the end date stipulated on the tenancy agreement, thereby contravening section 45 of the Act. The tenant did not make any attempt to assign the tenancy, leaving the burden of finding a

new tenant to the landlord. The landlord has provided evidence to satisfy me she took the steps to re-rent the unit as soon as possible after the tenancy ended. For these reasons, I find the landlord is entitled to compensation from the tenant for the breach, pursuant to section 67 of the Act. The landlord is entitled to one month's rent at \$3,100.00.

The landlord continues to hold the tenant's security deposit of \$1,550.00. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain the tenant's entire security deposit in partial satisfaction of the monetary order.

Conclusion

I grant the landlord a monetary order in the amount of \$1,550.00.

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: January 18, 2023

Residential Tenancy Branch