



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,270 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:47 pm in order to enable them to call into the hearing scheduled to start at 1:30 pm. The landlord and her property manager ("**LA**") 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 had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord, LA, and I were the only ones who had called into the hearing.

LA testified she served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail on May 11, 2022 to the forwarding address provided by tenant JR. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenants are deemed served with these documents on May 16, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Additional Applicant

The tenants entered into a tenancy agreement with the applicant landlord ("**RO**") as well as RO's common-law partner ("**RG**"). RO stated that she inadvertently left RG's name off as an applicant to this application. With her consent, I order that RG be added as an applicant and issue the attached monetary order in both RO and RG's name. For clarity, I will refer to RO as "the landlord" for the balance of this decision.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$4,270;
- 2) recover the filing fee; and
- 3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting January 15, 2022 and ending July 15, 2022. Monthly rent is \$2,800 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,400 and a pet damage deposit of \$1,400, which the landlord continues to hold in trust for the tenants.

LA testified that the tenants vacated the rental unit on February 25, 2022. She stated that the tenants were having interpersonal issues and could not live together. The landlord offered to allow one of them to leave and for the remaining tenant to bring in a roommate. Neither tenant chose to do this. LA testified that on February 25, 2022, the tenants dropped their keys to the rental unit off at her office.

Tenant JR provided the tenants' forwarding address via text message to the landlord shortly thereafter.

LA testified that she attended the rental unit on February 26, 2022, took photos, and posted it on her company's website for re-rent. On February 28, 2022, she conducted four showings to prospective tenants. She conducted three showings on March 3, 2022, four on March 7, 2022, and two on March 9, 2022.

She testified that she attempted to secure a tenant for March 1, 2022, and when she was unable to do that, for March 15, 2022 or some other date in March, and have the new tenants pay rent on a prorated basis. Despite this, the earliest she could secure a suitable new tenant for the rental unit was April 1, 2022. She submitted a copy of the new tenants' tenancy agreement showing monthly rent of \$2,800.

The landlord seeks compensation for the loss of ability to collect rent for March 2022 (\$2,800) as well as for \$1,470 representing the cost of the property management company's fee for securing a new tenant.

The landlord submitted a copy of a statement showing a placement fee of \$1,400 plus \$70 for GST for the work done to secure a new tenant.

Analysis

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:

- 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 “**Four-Part Test**”)

The tenancy agreement stipulated a term of six months. The tenants were not permitted to end the tenancy prior to the end of the fixed term. Accordingly, by moving out of the rental unit and returning their keys of February 25, 2022, which has the effect of ending the tenancy, the tenants breached the tenancy agreement.

As a result of this breach, the landlord was unable to generate income she was entitled to generate for March 2022 in the amount of \$2,800. I find that by posting the rental unit for rent within one day of the tenants ending the tenancy, by holding multiple showings, and by trying to rent the rental unit for March 1, 2022 and then later for mid-March 2022, the landlord acted reasonably to minimize her loss.

As such, I find that the landlord has satisfied all four parts of the Four-Part Test, and I order the tenants to pay the landlord \$2,800.

Additionally, as a result of the tenant’s breach of the tenancy agreement, I find that the landlord paid \$1,470 to her property management company in order to secure a new tenant. I find that this expense was reasonably incurred and to be of a reasonable amount (I note that the tenancy agreement’s addendum contained a liquidated damages clause which entitled to the landlord to \$2,800 in compensation for such an expense).

Accordingly, I find that the landlord is entitled to recover \$1,470 from the tenants.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenants pay the landlords \$1,570, representing the following:

Description	Total
March rent	\$2,800.00
Recovery of placement fee	\$1,470.00
Deposit credit	-\$2,800.00
Filing fee	\$100.00
	\$1,570.00

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 10, 2023

Residential Tenancy Branch