



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, 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, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and two landlord agents (agent K.E. and agent C.G.) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Agent K.E. testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on June 8, 2022. A Canada Post registered mail receipt stating same was entered into evidence. The tenant testified that she

received the above documents. I find that the tenant was served with the above documents in accordance with section 88 and 89 of the *Act*.

The tenant did not submit documentary evidence for consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the landlord and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 6, 2019 and the tenant moved out on or around June 27, 2020. Monthly rent in the amount of \$3,450.00 was payable on the first day of each month. A security deposit of \$1,725.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. This tenancy was a fixed term tenancy originally set to end on October 31, 2020. The tenant did not provide the landlord with a forwarding address at the end of this tenancy.

Agent K.E. testified that the tenant paid her rent in full to March 2020; however, the tenant only paid \$1,500.00 towards April 2020 rent, \$1,500.00 towards May 2020 rent and \$1,000.00 towards June 2020 rent. The landlord testified that the tenant also received \$500.00 per month for April, May and June 2020 from the BC Temporary Rent Supplement which was credited to her account. Agent K.E. testified that for the Month of May 2020, the landlord gave the tenant a rent discount in the amount of \$1,725.00 and that \$1,725.00 was credited to the tenant's account. The landlord entered into evidence a ledger confirming the above testimony regarding rent payments.

Agent K.E. testified that the tenant owes \$3,282.50 in unpaid rent from April to June 2020. The ledger states that as of June 4, 2020 the tenant had an outstanding balance on the account in the amount of \$3,282.50 comprised of \$3,125.00 in unpaid rent from April to June 2020 and \$157.50 for "Repairs and Maintenance expenses- Plumbing service".

The tenant testified that based on the landlord's calculations the amount of unpaid rent claimed by the landlord is true but she is perplexed by why the landlord would offer a rent reduction and then pursue other unpaid rent.

The tenant testified that starting March 17, 2020 she started speaking with the agent about an impending notice to end tenancy. Both parties agree that on June 1, 2020 the tenant provided the landlord with a formal written notice to end tenancy at the end of June 2020.

Agent K.E. testified that the tenant declined to sign a rent deferral payment agreement. Agent K.E. testified that following the tenant's notice to end tenancy provided via email on June 1, 2020, she drafted the following responding email dated June 2, 2020 and time stamped 10:21:

As you are currently in a one year lease, we will advertise the property right away in the hopes we can re-rent it and release you from your contractual obligation. At the time you break the lease, please know that there are damages payable to the Landlord as per clause 14, attached for your reference. I will speak with the Landlord, however I understand you have not responded to [agent C.G] and his request for you to communicate with us regarding creating any type of payment plan for the outstanding balance, and you absolutely refuse to communicate with me and complete a rent deferral. It will be difficult for me to advocate on your behalf without you bringing forth goodwill in communicating with us.

In order for us to do our best to re-rent the property and release you from your financial obligation, please make sure the home is in a clean and tidy condition and please cooperate with any potential showings. will connect with you directly, if there is interest to view the home.

Section 14 of the tenancy agreement refers to liquidated damages which the landlord has not sought in this application for dispute resolution.

Agent K.E. testified that she advertised the subject rental property for rent on Craigslist on June 2, 2020. The above advertisement was entered into evidence and lists the property at the same rental rate as that paid by the tenant. Agent K.E. testified that the first viewing of the subject rental property occurred on June 4, 2020. Agent K.E. testified that on June 7, 2020 the tenant requested no further showings until she vacated the subject rental property. This was not disputed by the tenant. An email from the tenant dated June 7, 2020 stating same was entered into evidence.

Both parties agree that the tenant agreed to have a video tour of the subject rental property filmed so that prospective tenants could remotely view the subject rental property. Agent K.E. testified that the video was filmed on June 18, 2020. This was not disputed by the tenant.

Agent K.E. testified that the subject rental property was advertised on three different online platforms, evidence of which was entered into evidence. Agent K.E. testified that in July 2020 there were numerous inquiries regarding the subject rental property and five credit applications were completed. Agent K.E. testified that one family was selected and they entered into a new lease agreement with the landlord on July 30, 2020 for a tenancy starting on September 1, 2020. The new tenancy agreement was entered into evidence and is at the same rental rate paid by the tenant.

Agent K.E. testified that the landlord is seeking \$6,900.00 in lost rental income for the months of July and August 2020 caused by the tenant's breach of the fixed term tenancy agreement.

The tenant testified that she responded via email to the June 2, 2020 email reproduced above later that same date. The email is dated June 2, 2020 and is time stamped 10:49 a.m. The email states in part:

I am moving BECAUSE I don't want to keep being short on rent for YOU. If you would rather or you think you can't rent it then perhaps its best to stay for now until things have settled. I am never going to be able to pay back any "damages" for leaving a lease early especially with the reason why I have to leave.

The above email was entered into evidence by the landlord. The tenant testified that agent K.E. responded to the above email and that she took agent K.E.'s responding email as a release from her fixed term tenancy agreement, meaning she would not have to pay damages for breaking the lease early. In the hearing the tenant read sections of

agent K.E.'s responding email aloud. The responding email, dated June 2, 2020 and time stamped 11:55 a.m. states in part:

.... As June is the final month of the BC-TRS supplement, and it does not seem you will be able to pay any more than \$2,000 for the foreseeable future, I think your best option would be to relocate and allow us to rerent the property and release you from your contractual obligations. If you are never going to be able to pay back any damages, I cannot see how you will be able to pay back any of the outstanding rents accumulating at \$1450 per month.

I had already advertised the unit prior to receiving your latest email. Please confirm you would like us to continue to market the property.

The tenant responded later that day "That sounds fine, thank you."

The tenant testified that she would never have ended the tenancy if she thought that the landlord would pursue damages for breaking the lease.

Agent K.E. testified that the June 2, 2020 email time stamped 11:55 a.m. was not a waiver of the tenant's obligations under the tenancy agreement but was the agent's thoughts on the tenant's best course of action. Agent K.E. testified that had the landlord agreed to waive the landlord's rights under the fixed term tenancy agreement, the landlord would have signed a Mutual Agreement to End Tenancy with the tenant.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Residential Tenancy Branch Policy Guideline 52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the RTB for a monetary order.

"Affected rent" is rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020.

Based on the testimony of both parties and the ledger entered into evidence, I find that the tenant owes the landlord \$3,125.00 in unpaid rent from April to June 2020. I note that the landlord did not apply for plumbing related damages and so is not eligible to collect said damages in this application for dispute resolution.

As this tenancy has ended, I find that the landlord is entitled to recover the entirety of outstanding rent owed by the tenant, including "affected rent". I award the landlord a Monetary Order in the amount of \$3,125.00.

Under section 7 of the Act a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Policy Guideline 3 states that 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.

Based on the testimony of both parties and the June 1, 2020 email entered into evidence, I find that the tenant provided the landlord with notice to end tenancy on June 1, 2020 and in doing so, she breached the fixed term tenancy agreement by ending the tenancy prior to October 31, 2020. The tenant's breach of the fixed term tenancy agreement decreased the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlord for that loss of rental income.

I find that the landlord mitigated the damages suffered by posting an advertisement for the subject rental property on June 2, 2020 at the same rental rate paid by the tenant, and listing the subject rental property on three different platforms. I find that the landlord diligently searched for a new tenant. Based on the signed tenancy agreement entered into evidence showing a tenancy starting September 1, 2020 for the subject rental property, I find that the landlord was successful in re-renting the subject rental property for September 1, 2020. In re-renting the subject rental promptly, the landlord mitigated the damages suffered and released the tenant from the tenant's obligation to pay September and October 2020 rent. I find that the landlord suffered a loss of rental income for the months of July and August 2020 due to the tenant's breach of the fixed term tenancy agreement.

I find that the tenant's refusal to have people view the subject rental property while living in it likely contributed to the loss of rental income suffered by the landlord and that the landlord acted reasonably in arranging a video tour to offset the loss suffered.

The tenant alleged that the June 2, 2020 email time stamped 11:55 a.m. constituted a waiver of the landlord's contractual rights. I do not agree with this assessment. I find that the June 2, 2020 email time stamped 10:21 a.m. clearly informs the tenant of the potential legal consequences of the notice to end tenancy already provided by the tenant. I find that in the June 2, 2020 email time stamped 11:55 a.m., agent K.E. provides the tenant with her opinion on the tenant's best course of action, but does not waive the landlord's right to collect loss of rental income stemming from the tenant's breach of the fixed term tenancy agreement. Agent K.E. states "I think your best option would be to relocate and allow us to re-rent the property and release you from your contractual obligations. I find that the clear intent was that the tenant would be released from the payment of rent for the months the subject rental property was rented to another person(s).

The tenant testified that she would not have given notice to end tenancy if she had thought that she might have to pay damages and that's why she responded to the June 2 11:55 a.m. with the go – ahead to re-rent the property. I note that the tenant gave her formal and final notice to end tenancy the day before, on June 1, 2020 and was not permitted to unilaterally withdraw that notice. The tenant was not permitted on June 2, 2020 to unilaterally revoke her notice to end tenancy.

I grant the landlord a Monetary Order for loss of rental income for the months of July and August 2020 in the amount of \$6,900.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$10,125.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: February 08, 2023

Residential Tenancy Branch