



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord June 07, 2022 (the “Application”). The Landlord sought the following:

- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord and Tenant appeared at the hearing. 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 Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Tenant said they received the Notice of Dispute Resolution Proceeding from the RTB two weeks prior to the hearing and were prepared to address the Application. The Tenant testified that they did not receive the Landlord’s evidence. The Tenant agreed admission of the written tenancy agreement and their own emails from June 03 and 06, 2022, was a non-issue. The only other evidence submitted by the Landlord was a five-page document with written submissions.

The Landlord testified that they served their evidence on the Tenant by email. The Landlord submitted that the Tenant agreed to be served by email in an email submitted. The Landlord did not provide a copy of the email sent to the Tenant with their evidence attached.

I was not satisfied the Tenant was properly served with the Landlord's evidence because I did not agree that the email the Landlord relied on stated that the Landlord could serve the Tenant by email. Further, the Landlord did not provide documentary evidence of service and therefore failed to prove service. Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Landlord's five-page document with written submissions should be admitted or excluded. I excluded the document because I found it would be unfair to the Tenant to consider it when the Tenant had not seen it and could not respond to it at the hearing.

The Tenant stated that they did not submit evidence because they did not get a chance to. I note that the Tenant had two weeks to submit evidence, more than enough time given the straightforward issues raised in the Application. I asked the Tenant what evidence they would have submitted had they had more time and the Tenant could not point to anything relevant to the issues in the Application.

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

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

Part of a written tenancy agreement was submitted, and the parties agreed it is accurate. The parties agreed the tenancy started in 2018. The written tenancy agreement started November 01, 2021. The agreement has "month-to-month" checked off under term 2 but also has a date after "and is for a fixed term ending on", the date being October 31, 2022. Rent in the agreement is \$1,650.00 per month due on the first day of each month. The parties agreed rent was \$1,700.00 per month at the end of the tenancy. Both parties signed the written tenancy agreement. The parties agreed the Tenant paid \$1,650.00 as a security deposit at the start of the tenancy although the parties used different names for this.

The Landlord testified that they did not receive a forwarding address in writing from the Tenant at the end of the tenancy. The Tenant testified that they told the Landlord where they were moving at the end of the tenancy. The Tenant also testified that the Landlord had their mailing address from the start of the tenancy.

The parties agreed the Tenant stated in an email at the end of the tenancy that the Landlord could keep the \$1,650.00 security deposit for last month's rent.

The Landlord testified as follows. The Tenant moved out of the rental unit June 06, 2022. The Tenant paid May rent and agreed to the Landlord keeping the security deposit for June rent. The Landlord is seeking loss of rent of \$50.00 for June, being the difference between the security deposit amount and rent amount. The Landlord is seeking full rent for July to October for a total of \$6,850.00. The tenancy was a fixed term tenancy and the indication in the written tenancy agreement that it was month-to-month was a mistake. The Tenant ended the fixed term tenancy early. The Tenant provided notice ending the tenancy for the first time on June 03, 2022. The Landlord tried to re-rent the unit by posting it for rent and telling people about it; however, the unit is for seasonal use and it could not be rented in the summer after the Tenant moved out. The Landlord still has not re-rented the unit and moved into the unit in November 2022 to repair issues in the rental unit.

The Landlord submitted that the Tenant should have known the tenancy was a fixed term tenancy because all prior agreements between the parties were for a fixed term.

The Tenant testified as follows. They moved out of the rental unit in May. They did not understand 100% that the tenancy was a fixed term tenancy. They provided notice ending the tenancy June 03, 2022. They did not provide notice of a breach of a material term to the Landlord pursuant to section 45 of the *Act*. They did not see any posting for the rental unit after they moved out.

Analysis

Section 38(4)(a) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The parties agreed the Tenant stated in an email at the end of the tenancy that the Landlord could keep the \$1,650.00 security deposit for last month's rent. Given this, the Landlord can keep the \$1,650.00 security deposit for last month's rent.

I accept that the tenancy agreement was a fixed term tenancy because the agreement provides an end date of October 31, 2022, under term 2(c) and because the parties included a "reason tenant must vacate" under term 2(e) which was "term of lease over" which supports that the parties contemplated this being a fixed term tenancy.

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.

The Tenant was not permitted to end the tenancy prior to October 31, 2022, unless section 45(3) of the *Act* applied. The Tenant acknowledged they did not comply with section 45(3) of the *Act*. The Tenant breached section 45 of the *Act* and the term of the tenancy agreement by ending the tenancy early.

I accept that the Landlord lost rent due to the Tenant's breach including \$50.00 of rent for June and full rent from July to October.

I am not satisfied based on the evidence provided that the Landlord mitigated their loss. On June 03, 2022, the Landlord was required to try to re-rent the unit. Although the Landlord says they tried to re-rent the unit, there is no evidence before me to support this testimony. Where a landlord is seeking loss of rent due to a tenant ending a tenancy early, I expect to see evidence showing the landlord took reasonable steps to re-rent the unit such as rental advertisements or correspondence with potential new tenants. This is particularly so when the landlord is seeking four months of loss of rent.

In the circumstances, I award the Landlord \$50.00 for loss of rent for June and \$1,700.00 for loss of rent for July. I find this appropriate because, even under a month-to-month tenancy, the Tenant's notice to end tenancy would not have been effective until July 31, 2022, and the Tenant would have been responsible to pay for July rent. Further, I do not find it unreasonable that the Landlord could not have re-rented the unit for July 01, 2022, when the Tenant only provided notice June 03, 2022, and only confirmed having moved out June 06, 2022.

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

In total, the Landlord is entitled to \$1,850.00 and is issued a Monetary Order for this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued a Monetary Order for \$1,850.00. This Order must be served on the Tenant. If the Tenant fails 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: March 16, 2023

Residential Tenancy Branch