



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation or the tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenant QS (the tenant) represented tenant MH. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

The tenant confirmed receipt of the notice of hearing and the evidence (the materials) and that both tenants had enough time to review them.

The tenant did not serve the response evidence.

Based on the undisputed testimony, I find the landlord served the materials in accordance with section 89(1) of the Act.

Residential Tenancy Branch (RTB) Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the

hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Per Rule of Procedure 3.15, I excluded the tenants' response evidence.

Preliminary Issue – named landlord

At the outset of the hearing the landlord corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the application to correct the landlord's first name.

Issues to be Decided

Both parties agreed they understand the landlord is seeking monetary compensation of \$3,950.00 for loss of May rental income, \$2,073.75 for the cost to find new tenants and \$100.00 for the filing fee.

As the tenants authorized the landlord in writing to retain the \$1,975.00 deposit in compensation for the losses claimed, the landlord is seeking a total compensation of \$4,148.75.

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they signed a tenancy agreement on April 14, 2022 for a 12-month fixed term tenancy starting on May 01, 2022. Monthly rent due on the first day of the

month was \$3,950.00, to be paid via pre-authorized bank payment. The landlord received the \$1,975.00 deposit.

The landlord affirmed that the tenancy agreement named the landlord as: "Real Property Management Signature agent for owner MS". The landlord stated that real estate agent CC represented him.

The tenant testified that she lost a family member on April 26 and on April 27, 2022 she informed CC that she would not be able to move to the rental unit. The tenant emailed the landlord at 10:41 PM on April 27, 2022:

Due to the circumstances we will ask to terminate the lease that was supposed to start May 1st 2022. We will not be moving forward and paying Mays rent as its unfair. The market for [redacted] it's extremely high and I have well wishes you will find a perfect fit to suit the home. As early as May.

[...]

We have paid a deposit of \$1,975.00 dollars, you and the company can keep that as good sake that we haven't moved in nor we haven't even got the keys yet.

The parties emailed each other on April 28, 2022:

Landlord: With regards to the lease signed April 14th, In an effort to find a solution that was both fair to the landlord and minimised the disturbance to you in this difficult time you describe, I explained the following 3 options regarding the 12 month lease contract in place:

Option 1 End the lease by mutual consent

This process is defined under the residential tenancy act and is designed for circumstances where both parties agree that a lease should end before the term. The end of tenancy by mutual agreement allows for costs to be minimised and defines the legal end of the agreement when signed by both parties/

In the case where a tenant wishes to end the lease early in this case the tenant will be responsible for payment of rent until we find new tenants and a new lease starts

We would take immediate steps to find new qualified tenants as quickly as possible.

We will do our best to find qualified tenants willing to start a lease as quickly as possible and minimise the vacancy period.

However I explained to [MH] that with less than 3 days to go before the start of May, it would be unlikely to have new qualified tenants in place for May 1st and for that reason we were unable to commit to having replacement tenants in place before 1st May.

During our call MH agreed that it was unlikely that we would find new tenants in 2 days

However June 1st or earlier is a possibility but until a new lease starts we cannot be certain.

Tenant will be responsible for cost of finding new tenants This cost can be deducted from the security deposit.

If we find new qualified tenants willing to start a lease and pay rent before June 1st, we will re fund a portion of May rent equal to the period covered by the new tenancy.

At the end of the call MH agreed with me that option 1 was the preferable route.

Option 2 continue with the lease as signed

Option 3 default on the lease and suffer eviction with costs

We recommend Option 1 and MH agreed this made more sense.

Please remember that once the lease is signed all parties can expect that the lease is honoured in all its terms. Tenants have a right to accommodation and Landlords have a right to payment of rent.

For your protection, in order to end the lease we need to either follow Option 1 or Option 3, we cannot simply forget about the lease as it is a legally binding document that gives all parties rights and protections.

I urge you to reconsider your choice of option before you take steps that would mean we have no choice but to pursue an eviction and seek a monetary order for costs in this regard. Typically in these situations costs are awarded to landlords for loss of rent and costs incurred within the process, these can mount significantly and may impact your future credit and status.

[...]

Tenant: I will not be taking any deal. The deal is please terminate the lease.

(emphasis in the original)

Both parties agreed the tenant did not pay rent on May 01, 2022. The landlord started advertising the rental unit on May 04, 2022 immediately after he received the bank confirmation that the pre-authorized bank payment was not paid. The landlord asked for the same amount of rent.

The landlord was able to re-rent the rental unit for June 01, 2022 for \$3,950.00 and has received rent since that date.

The landlord is seeking \$2,073.50, as the landlord paid this amount to the real estate agent for his services to advertise the rental unit to find new tenants for the June 2022 tenancy agreement. Hereinafter, I will refer to this claim as the replacement fee. The landlord also paid this fee for the tenancy agreement signed with the tenants.

The tenant said that several people were seeking to rent this unit and that the landlord is not supposed to receive one month of loss of rental income.

The landlord submitted a monetary order worksheet into evidence.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

RTB 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 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.

Loss of rental income

Per section 16 of the Act, “the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.”

I accept the undisputed testimony that the parties signed a tenancy agreement on April 14, 2022 for a 12 month-fixed term tenancy starting on May 01, 2022, monthly rent in the amount of \$3,950.00 was due on the first of the month and the tenants informed the landlord on April 27, 2022 that they would not move to the unit.

Based on the April 28, 2022 email, I find the landlord clearly informed the tenants that they are liable for loss of rental income. I note the landlord emphasized in the email that he would take immediate steps to find a new tenant as quickly as possible.

Based on the undisputed testimony and the April 28, 2022 email, I find the tenants were aware the tenancy was for a fixed-term starting on May 01, 2022 and ending on April 30, 2023 and the tenants ended the tenancy early on April 28, 2022, contrary to section 45(2)(b) of the Act:

(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.

(emphasis added)

I find that due to the tenants’ failure to pay rent, the landlord incurred a loss of rental income of \$3,950.00 from May 01 to 31, 2022.

RTB Policy Guideline 3 sets conditions for loss of rental income claims. It states:

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, RTB Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's uncontested testimony, I find the landlord acted to minimize his losses by advertising the rental unit for a monthly rent of \$3,950.00 since May 04, 2022.

However, per section 7(2) of the Act and RTB Policy Guidelines 3, 5 and 16, the landlord should have advertised the rental unit as soon as possible. I find the landlord did not minimize his losses from April 28 to May 03, 2022, as the landlord was aware that the tenants would not move to the rental unit on April 28, 2022 and only started advertising it on May 04, 2022.

Thus, I award the landlord \$3,440.32 loss of rental income from May 04 to 31, 2022 (\$3,950.00 / 31 days x 27 days).

Replacement fee

Based on the landlord's uncontested and convincing testimony, I find the landlord suffered a loss of \$2,073.50 because the tenants terminated the tenancy agreement early and the landlord paid the amount claimed for the real estate agent to find new tenants.

As such, I award the landlord \$2,073.50.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

The tenants previously authorized the landlord in writing to retain the \$1,975.00 deposit in compensation for losses suffered.

In summary:

Expenses	\$
Loss of rental income	3,440.32
Replacement fee	2,073.50
Filing fee	100.00
Subtotal	5,613.82
Minus deposit	1,975.00
Total monetary order	3,638.82

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order of \$3,638.82.

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: May 31, 2023

Residential Tenancy Branch