



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNRL-S, FFL**

Tenant: **MNSDB-DR, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act*.

The landlord applied for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- A return of a security deposit and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant and both landlords attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the respective applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issue

The tenant named a second applicant as a tenant in his application for dispute resolution. This person did not sign the tenancy agreement and is therefore not a tenant as defined under the Act; she is an occupant without any rights or obligations.

As a result this person's name was removed from the cover page of this decision pursuant to section 64 of the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenant for ending the fixed term tenancy before the end of the fixed term?

If so, can the landlord retain the tenant's security deposit and pet damage deposit, or should it be returned to the tenant?

Can either party recover their filing fee?

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.

The following facts are not disputed:

- The tenancy began on July 14, 2022, between the two named landlords and the tenant.
- The other named tenant on the tenancy agreement is the tenant's mother who never occupied the rental unit.
- The tenancy was fixed term with an end date set for August 31, 2023.
- A condition inspection report was done at the commencement of the tenancy.
- On March 27, 2023, the tenant verbally advised the landlord that he was breaking the fixed term tenancy, as he was moving to a different town.
- The tenancy ended on April 29, 2023.
- The landlord conducted a condition inspection report at the end of the tenancy without the tenant present but found no damage and sent the tenant a copy of the move-out condition inspection report.
- The tenant sent his forwarding address to the landlords via registered mail on May 19, 2023.
- The landlords filed their application for dispute resolution on May 26, 2023.

The landlords gave the following testimony. They started looking for a new tenant on April 2, 2023 by placing an ad on Kijiji. The landlords spoke to 42 potential applicants through the app and via email. Applications were sent to 33 people and the landlord got

9 responses. The landlord offered to show the suite to 4 people, and the unit was offered to rent to 2 of them, however both turned the landlord down.

Near the end of April, the landlord discovered copies of her Kijiji ad on Kijiji and Facebook marketplace, with an unknown contact. Thinking it was a scam, the landlord discovered it was the tenant's live-in girlfriend trying to help find a new tenant so the tenant would not be required to compensate the landlord for lost rent. The landlords testified that the unauthorized ad placed by the tenant's girlfriend hindered their progress in finding a suitable tenant because it confused applicants seeking to rent the place and it turned into a "gong show". The unauthorized ads bumped the eventual placement of the tenant into June.

The landlords testified that they got a flood of applicants but that they had to find just the right fit for the building. Some applicants turned it down because the steep bank to the creek was unsafe for children and pets during spring runoff and others were declined by the landlord because multiple adults in the unit would cause parking problems for the other units in the building. The landlord carefully screens potential tenants by having them fill out applications, provide 3 references, including current employer and landlord. They personally call each reference. Before they entered into the tenancy with their current tenant, the unit was offered to 5 other people.

The tenant gave the following testimony. Although he broke the lease and ended his fixed term tenancy before the end of the term, the landlord failed to mitigate the loss by finding a tenant for the month of May. The landlord should have had no problems finding a tenant for the beginning of May, since there is a scarcity of rental housing in town. As of October, 2022, there is a 0.9% vacancy and for a 3 bedroom, it's 0%.

The tenant was confident the unit could be rented for May 1st. By April 18th, the landlord only had a single showing of the unit. It appeared to the tenant that the landlord was only looking for people willing to rent for June 1st. The only ad placed by the landlord was in Kijiji and the landlord didn't broaden their search to other platforms.

The tenant was concerned he would be responsible for paying May's rent due to it being vacant for May and his girlfriend posted a second ad on Kijiji and the other ad on Facebook. The person who eventually rented out the unit for June 1st found the unit on the tenant's Facebook not the landlord's Kijiji ad. The tenant provided screenshots of the conversation history between the eventual tenant, "T" and himself. In it, the tenant asks "T" why she didn't move in sooner than June 1st, and "T" responds, saying it was because the landlord did painting, and was available on June 1st.

Analysis

A fixed term tenancy cannot end on any date earlier than the date specified on the tenancy agreement. There are 3 exceptions to this:

- Both parties agree in writing using a mutual agreement to end tenancy;
- The tenant is fleeing from family or household violence or the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility;
- As ordered by the arbitrator.

On April 29, 2023, the tenant ended the tenancy that was scheduled to end on August 31, 2023. By giving notice that as earlier than the date specified in the tenancy agreement as the end of the tenancy, the tenant has breached section 45 of the Act. For damage or loss that result from a failure to comply with the legislation, the landlord is entitled to compensation pursuant to section 7(1) of the Act.

Pursuant to section 67, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline 16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

Residential Tenancy Policy Guideline 3 – [Claims for Rent and Damages for Loss of Rent] states:

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any

loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

Although the landlord could have sought rent from the tenant until August 31st, the evidence shows that the landlord only sought rent for the month of May. I look to the email sent by the landlord to the tenant on April 6th where they ask the tenant to cover May's rent so they could find new tenant. If a suitable tenant could be found for the month the tenant leaves (May), then they seek only half of May's rent. Otherwise, they want the full month to cover the unexpected vacancy.

To me, this means the landlord is expecting payment from the tenant regardless of whether or not the unit is re-rented for May. As stated in Policy Guideline 3, compensation is only meant to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. The landlord is not automatically entitled to rent for the month of May. Nonetheless Policy Guideline 5 – Duty to Minimize Loss states:

Loss of Rental Income

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.

In the dispute before me, the landlords provided sufficient evidence to satisfy me they took immediate steps to re-rent the unit for May 1st by placing an ad on Kijiji on April 6th. The communication between the parties during April presented as evidence for this hearing satisfies me of the truthfulness of the landlord's testimony that as of April 6th, the landlords have corresponded with close to 20 people. I also find that the

unauthorized efforts made by the tenant's girlfriend to broaden the scope of the landlord's search for tenants on Facebook and Kijiji ultimately caused confusion for potential applicants and made the landlord's search more complicated by having to post retractions on social media.

I fully accept the landlords' argument that, despite the "tight rental market" in town, they had to find the right fit for the unit. As the landlord points out, screening tenants entails more than simply ensuring potential tenants have sufficient income to pay rent. The landlords have a duty to ensure the eventual occupants of the rental unit will not significantly interfere with or unreasonably disturb other occupants of the building. I find the landlords did not delay in seeking to re-rent the unit and have taken reasonable steps to re-rent it immediately. (point 4 of the 4 point test).

Despite this, from "T's" Facebook messages, I find that the landlords took the opportunity created by having the unit vacant during the month of May to repaint the unit. While I find this move to be reasonable, the tenant should not be required to ensure rent for the unit is covered while the landlord makes it more appealing for the next tenant. Though I find the landlords re-rented the unit within the reasonable period of one month, they benefitted from the extra month to paint it.

As stated earlier, section 7 states that the non-complying tenant must compensate the landlord for damages or loss resulting from a breach of the Act. Policy Guideline 5 states that if a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied.

While the landlords are not automatically entitled to compensation for the lost rent for May, they could be entitled to the costs associated with re-renting the unit. The tenancy agreement did not have a liquidated damages claim, which is an agreement in advance of the landlord's pre-estimated cost of re-renting the unit. As there was no agreed to pre-estimate, the landlord must provide the evidence to support their claim for this cost.

The landlord testified that they only placed an advertisement on Kijiji, which I understand does not cost anything. The landlords may have incurred expenses for their time spent screening applicants, callbacks and viewings, however the landlord provided no documentary evidence to demonstrate what those expenses were. I find the landlord has provided insufficient evidence to prove the value of the damage or loss they seek (point 3 of the 4 point test)

Accordingly, I find insufficient evidence from the landlord to support a claim for lost rent for May, 2023 or the cost of re-renting the unit due to the tenant's early ending of the fixed term tenancy. The landlord's application is dismissed without leave to reapply.

The evidence shows that the landlord and tenant conducted a condition inspection report at the beginning of the tenancy. The landlord found no damage at the end of the tenancy and sent the signed move-out condition inspection report, finding no damage, for the tenant to sign. The landlords filed their application for dispute resolution, seeking to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address. As such, the doubling provisions of section 38 do not apply. The landlord is ordered to return the tenant's security deposit and pet damage deposit, in the sum of \$1,850.00. The landlord is also required to pay interest on that amount, \$34.45.

The tenant's application was successful and the landlords' was not. The tenants are entitled to recover their filing fee of \$100.00.

Conclusion

Pursuant to sections 38 and 72, I grant the tenants a monetary order in the amount of \$1,984.45.

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: December 13, 2023

Residential Tenancy Branch