



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for loss of rent, other money owed, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), the Tenant, and the Tenant’s assistant (the “Assistant”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

In the hearing the Agent testified that the Landlord’s documentary evidence was sent to the Tenant by registered mail on July 7, 2018, at the forwarding address provided by the Tenant at the end of the tenancy. Although the Tenant acknowledged that the address used by the Landlord is the one she provided as her forwarding address, the Tenant testified that they never received the registered mail as that address is now eight months old and is actually a place of business, not a residence. The Landlord also acknowledged that the registered mail tracking showed that the package was never received by the Tenant.

Although I appreciate that the Agent used the forwarding address provided by the Tenant at the end of the Tenancy, I note that at the time the registered mail was sent, the address was eight months old. Given the length of time that passed between when the forwarding address was provided and when the registered mail was sent, and the fact that the registered mail was never received by the Tenant, I therefore find that this evidence was not served on the Tenant in accordance with the Rules of Procedure and the *Act*.

Further to this, the Tenant testified that they sent their evidence to the Landlord by e-mail approximately eight days prior to the hearing; however, the Agent denied receipt of this evidence. Given the Agent's testimony that this evidence was never received and the fact that e-mail is not an acceptable form of service under the *Act*, I therefore find that the Tenant's evidence was not served on the Landlord in accordance with the *Act* and the Rules of Procedure.

As the ability to know the case against you is fundamental to the dispute resolution process, I find that it would be fundamentally unfair to accept any of the documentary evidence before me from either party for consideration in this matter as it was not served as required by the *Act* and the Rules of Procedure. As a result, I have excluded all of the documentary evidence before me from consideration in this matter and the hearing therefore proceeded based only on the testimony of the parties.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of rent and other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that a one-year fixed-term tenancy agreement was signed on November 29, 2017, for a tenancy commencing December 1, 2017, and ending November 30, 2018. The parties also agreed that rent in the amount of \$2,200.00 was to be due on the first day of each month.

The parties agreed that the tenancy agreement also included a \$2,200.00 liquidated damages clause and a clause allowing the Landlord to charge a \$25.00 fee for returned cheques, however, the Tenant stated that as English is not their first language, they did not understand these terms at the time the tenancy agreement was signed. The Agent stated that when the tenancy agreement was signed, the Tenant brought their son with her to interpret the agreement. The Agent stated that they took a full hour to go over all of the terms together and that as a result, there is no way the Tenant did not understand the tenancy agreement in its entirety.

The parties agreed that on November 30, 2017, or December 1, 2017, the Tenant notified the Landlord that they will not be able to move into the rental unit and needs to end the tenancy. The parties agreed that the keys were subsequently returned on December 1, 2017.

The Agent testified that the Landlord suffered a loss in the amount of \$1,118.80 when the Tenant breached the fixed-term tenancy agreement by ending the tenancy early. Despite the fact that the liquidated damages clause allows the Landlord to seek \$2,200.00, the Agent stated that the Landlord is only seeking \$1,118.80, which is the actual cost for re-renting the unit, the cost of the fee's incurred by the Landlord for two returned cheques, and the loss of rent suffered.

The Agent testified that the cheques received for December rent and the security deposit both bounced and sought \$50.00 for the cost of the returned cheques at \$25.00 each. The Tenant acknowledged that these cheques bounced as they had them cancelled when they decided they would not move into the rental unit and admitted that they did not advise the Landlord that they had cancelled these cheques. Despite the foregoing, the Tenant argued that they should not be responsible for this cost as the Landlord should not have attempted to cash the cheques.

The Agent stated that the Landlord is seeking \$542.80 for liquidated damages which is the actual cost incurred by the Landlord for remarketing the rental unit and finding a new tenant; including such costs as advertising, credit check fees, and man hours associated with the termination of the original tenancy agreement and finding a new tenant. The agent testified that a new tenancy agreement was signed with a new tenant on December 4, 2017, only three days after the Tenant breached their fixed term, and that the new tenancy agreement started December 7, 2017. The Agent stated that the unit was re-rented at the same rental rate, and as a result, the Landlord is only seeking \$426.00 for the loss of rent between December 1, 2018, and December 6, 2018.

The Tenant apologized for the situation but stated that they do not believe they should be responsible for this loss of rent as they notified the Landlord as soon as they could that they would not be able to move in and needed to end the tenancy. The Landlord also sought \$100.00 for recovery of the filing fee.

Analysis

Although the Tenant argued that she did not fully understand the terms of the tenancy agreement prior to signing it, I find that it was incumbent upon her to read and understand the tenancy agreement, in its entirety, before signing the agreement. As a result, I find that she is bound by the terms of the agreement as agreed upon by the parties in the hearing.

Despite the fact that the Tenant never moved into the rental unit, section 16 of the *Act* states that 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. As a result, I find that the rights and obligations of the parties began on November 29, 2017, the date the tenancy agreement was entered into.

Both parties agreed that the tenancy agreement allows the Landlord to charge a \$25.00 fee for each returned cheque, and although the Tenant stated that the Landlord should never have attempted to cash the rent and security deposit cheques, I do not agree. As stated above, the obligations of the Tenant began on November 29, 2017, the date the tenancy agreement was entered into. As a result, I find it was well within the Landlord's right to cash the rent cheque for December and as well as the security deposit cheque.

Further to this, I find that the Tenant likely could have avoided this charge, had she advised the Landlord or the Agent that the cheques had been cancelled.

Section 7 of the Residential Tenancy Regulation (the "regulation") states that a landlord may charge an administrative fee of not more than \$25.00 for the return of a tenant's cheque if the tenancy agreement allows for this fee. As the parties agreed that the tenancy agreement allows the Landlord to charge this fee, I therefore find that the Landlord is entitled to \$50.00 for the costs associated with the return of two of the Tenant's cheques.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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. Based on the above, I find that the Tenant breached section 45 of the *Act* when she gave notice to end the tenancy on either November 30, 2017, or December 1, 2017.

As a result of the above, I find that the Tenant is therefore responsible to compensate the Landlord for any loss suffered as a result of their breach of section 45 of the *Act*.

As I find the administrative costs sought for re-rental of the unit reasonable, given the short notice given by the Tenant, the tasks involved in re-renting the unit, and in light of the fact that the Landlord could have sought up to \$2,200.00 in liquidated damages for these costs, I find that the Landlord is therefore entitled to \$542.80 for the cost of re-renting the rental unit.

Further to this, I also find that the Landlord is entitled to the \$426.00 sought for loss of rent for December 1, 2017, to December 6, 2017. Although the Tenant argued they should not be responsible for these costs as they notified the Landlord right away that they needed to end the tenancy, by their own testimony they did not provide this notice to the Landlord until either the day the tenancy agreement commenced or the day prior. Despite this incredibly short notice, the Landlord was still able to mitigate their loss by signing a new tenancy agreement with a new tenant on December 4, 2017, with an occupancy date of December 7, 2017. As a result, I find

that the Landlord complied with section 7 of the *Act* by minimizing, as much as possible, the loss of rent suffered.

As the Landlord was successful in their Application, I find that they are also entitled to the recovery of the \$100.00 filing fee. Based on the above, the Landlord is therefore entitled to a Monetary Order in the amount of \$1,118.80.00

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,118.80. 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: August 29, 2018

Residential Tenancy Branch