



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On June 29, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.H. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. Both parties provided a solemn affirmation.

The Landlord advised that she served the Tenant the Notice of Hearing package and evidence by registered mail to the Tenant’s address prior to this tenancy. The Tenant confirmed that she received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package and evidence.

Both parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy was supposed to start on June 15, 2018; however, the Tenant did not move in. Rent was established at \$2,000.00 per month, due on the first day of each month and a security deposit of \$1,000.00 was also paid. The Landlord submitted into evidence a tenancy agreement that was signed by both parties on May 25, 2018.

The Landlord advised that the previous tenant gave up vacant possession of the rental unit at the end of May 2018, that renovations to the rental unit started immediately, and that these were completed by June 14, 2018. She advised that the Tenant was not satisfied with the condition of the rental unit when she picked up the keys and the Tenant did not end up moving in. She stated that her assistant accompanied the Tenant into the rental unit and she stated that the Tenant was “picky” and that the rental unit was “not up to her standards”. The Landlord advised that the rental unit was 95% complete on the day the tenancy was supposed to start. She submitted that the Tenant gave notice to end her tenancy by email on June 18, 2018. The Landlord then took steps to advertise the rental unit, she eventually re-rented the unit for July 1, 2018, and she is seeking compensation in the amount of **\$1,000.00** for the lost rent. She submitted into evidence invoices for all the renovation work that was completed.

The Tenant advised that she conducted a walk-through of the rental unit on May 25, 2018 and she noticed that there were issues that needed fixing, so she spoke to the Landlord about these necessary repairs. She later asked the Landlord about the progress of the repairs and the Landlord informed her that they were completed. She participated in a walk-through of the rental unit on June 15, 2018 with the Landlord’s assistant. However, when they arrived, there were no keys and there was a maintenance worker in the rental unit conducting repairs still. She stated that she is trained as a professional to view suites and in her opinion, there were still deficiencies and safety issues. She advised that the closets would not open, that the three of them had to work together to open them, and that when they finally did open, the door came off the track. The Tenant stated that she was not happy and that she was not prepared to move in based on the issues, so the assistant told her to discuss this with the Landlord. She stated that she wanted to move in and that two weeks should have been sufficient to complete the necessary repairs.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

There is no dispute that the parties entered into a fixed term tenancy agreement from June 15, 2018 ending June 30, 2019, yet the tenancy effectively ended when Tenant did not take possession and gave notice to end the tenancy. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While it was her belief that the rental unit was not ready for occupation, the Tenant should have provided a breach letter to the Landlord requesting that the deficiencies be repaired and that a rent reduction should be granted. There is no provision in the *Act* which allows the Tenant to simply end a tenancy in the manner that she did based on her opinion. Furthermore, I have before me evidence that the Landlord submitted demonstrating that renovations to the rental unit were completed. When weighing the totality of the evidence on a balance of probabilities, I am satisfied that the rental unit was more likely than not reasonably suitable for occupation on June 15, 2018.

As I am not satisfied that the Tenant ended the Tenancy in accordance with the *Act*, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45. Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As the Tenant did not pay any rent and as I am satisfied that the Tenant did not end the tenancy in accordance with the *Act*, I find that the Tenant is responsible for the rental loss that the Landlord suffered. Consequently, based on the evidence before me, I am

satisfied that the Landlord is entitled to compensation for lost rent from June 15, 2018 to June 30, 2018, totaling **\$1,000.00**.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

June 2018 rental loss	\$1,000.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,000.00
TOTAL MONETARY AWARD	\$100.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** 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: November 22, 2018

Residential Tenancy Branch