# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution made on July 20, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following remedies:

1. a monetary order pursuant to section 67(1) of the Act for loss of rent; and,
2. a monetary order pursuant to section 72(1) of the Act for recovery of the filing fee.

A dispute resolution hearing was convened, and the landlord, the tenant, and the tenant's legal advocate attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called one witness. The parties did not raise any issues in respect of the service of notices or documentary evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for loss of rent?

2. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that on or about May 27, 2018, the tenant responded to the landlord's Craigslist advertisement for the rental unit, a coach house. The tenant came by to look at the rental unit, and the two sat down at a table to discuss the tenancy; the landlord remarked that they discussed monthly rent ($1,200.00) and that it was due on the first of the month, that there were no pets allowed, and no smoking was permitted. The tenant agreed to rent. He brought cash and gave $1,200.00 to the landlord.

The landlord submitted that the $1,200.00 was rent for June 2018, while the tenant and tenant's legal advocate submitted that the $1,200.00 was a security deposit in excess of what could be charged as a security deposit under the Act. The tenant submitted a copy of a receipt which is dated May 27, 2018, for $1,200.00, and which states it is for a security deposit.

On June 1, 2018, the previous tenant was on her way out, and was out by 12:30 P.M. The landlord waited around but the tenant never showed up. At around 2:00 P.M., the tenant phoned and said that he was not moving in. According to the tenant, his father was passing away and that the tenant needed the security deposit to go see his father. The tenant sent a text to the landlord at 2:00 A.M. on June 2, 2018, in which the tenant indicates that he was leaving. After the landlord told the tenant that he was not going to return the money, the tenant purportedly called the landlord several times and threatened the landlord.

It is the landlord's submission that the tenant simply found a new place to live and changed his mind about renting the rental unit. Within a few days of the tenant choosing not to rent the rental unit the landlord advertised the rental unit again, and has several people look at the rental unit, but most people wanted to rent it on the first of July 2018.

The landlord commented that he was involved in a motor vehicle accident and suffers from lost concentration due to a concussion.

On July 12, 2018, the landlord received the tenant's forwarding address by way of the law students' legal advice program, and then applied for dispute resolution on July 20, 2018.

Tenant's legal advocate submitted that money exchanged hands before there was a written agreement.
The tenant's legal advocate submitted that the tenant responded to the landlord's

advertisement of an unfurnished dwelling. The tenant inspected the rental unit on May 27, 2018 and gave the landlord a deposit of $1,200.00 to hold the rental unit “while they put together a written rental agreement.” The advocate further submitted that the parties “did not enter into a verbal tenancy agreement at that time but rather discussed what a possible tenancy agreement might look like.” On June 1, 2018, the tenant tried again to obtain an agreement and keys from the landlord, and then informed the landlord that he would not be moving into the rental unit.

Tenant’s advocate argues that the landlord took advantage of the tenant’s situation. He further argued that he never gave the tenant a key nor the opportunity to move into the rental unit. In response to my asking tenant’s advocate whether the tenant attended to the rental unit in person, the explanation was that the tenant does not have means of transportation and that he was not prepared to travel all the way to the rental unit if the landlord could not be assured to be home in order to hand over the keys.

In rebuttal, the landlord argued that after May 28 there was no other communication other than the tenant calling once or twice to set up a time for the tenant to attend for a move-in inspection and obtain the keys. The landlord offered the time on June 1 for the tenant to attend, but he “just never showed up.”

Analysis

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. In this case, the landlord seeks compensation for one month’s loss of rent.

(As an aside, and at the outset, I commend the quality of the tenant’s advocate’s written submissions and oral presentation skills. The written submission and legal arguments were thorough, logical, and clearly presented.)

Section 7 of the Act states that 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. Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party. And, in deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

Before applying the test, however, I must first determine whether there existed a tenancy and a tenancy agreement.

Section 1 of the Act defines "tenancy" to mean **"**a tenant's right to possession of a rental unit under a tenancy agreement." A "tenancy agreement," also defined in section 1, means "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

Turning now to the tenant's argument and submission that there was no agreement, I disagree. While a *written* tenancy agreement had not yet been formalized, an oral agreement was created by the words and conduct of the parties. There is, I find in this case, an offer, acceptance, and consideration.

The parties met on or about May 27, 2018. The tenant inspected the rental unit and it was to his liking. That is, the landlord offered to rent the tenant the rental unit and the tenant accepted. There is also consideration: the tenant gave the landlord $1,200.00. Whether the monies were intended to be a security deposit (as posited by the tenant, and, the likely transaction based on the receipt) or rent for June (as suggested by the landlord), monies changed hands with the intentions of the parties moving ahead with a tenancy that was to commenced June 1, 2018. The parties discussed the basic terms of the tenancy, for example, no pets or smoking, when rent was due, and that the landlord wanted a long-term tenant. The tenant did not dispute that this conversation occurred.

Based on the conduct of the parties and, most tellingly, the tenant's giving $1,200.00 to the landlord, I find that the parties had, during that conversation and transfer of $1,200.00 on May 27, 2018, entered into an oral agreement respecting the tenant's possession of the rental unit. In other words, a tenancy agreement was formed on May 27, 2018, notwithstanding that the tenancy agreement had not yet been put into writing, and that the tenant gave notice to end the tenancy on June 1, 2018, the date on which the tenancy started.

I am not persuaded by the tenant's argument that the reason the tenant backed out of the tenancy was because of the apparent lack of the landlord finalizing a written tenancy agreement or due to the landlord's "disappearance." That the tenant "urgently needed to find housing to avoid the prospect of homelessness" (as submitted by his advocate) is inconsistent with the tenant's failure to make any effort to attend to the rental unit to obtain either a written tenancy agreement or the keys to the coach house.

The absence of a written tenancy agreement prior to June 1 does not nullify the fact that the tenant's tenancy was to commence June 1, 2018. I am further not persuaded by the argument that tenant's apparent lack of transportation somehow prevented him from attending to the rental unit; he attended on May 27 and again a few months later. That the tenant never attended to the rental unit to obtain the keys, but instead phoned the landlord on the afternoon of June 1, 2018, suggests that—and I make this inference from the tenant's conduct—the tenant never intended to move into the rental unit. The tenant was facing imminent homelessness yet chose to call but a few times and not once attempted to go to his new rental unit: this conduct suggests that the tenant had intentions other than that of taking possession of the coach house.

Finally, the argument that the rental unit changed from unfurnished to furnished resulted in a breach of the fundamental terms of the agreement is not supported by any evidence beyond the conflicting testimony of the landlord and the tenant. As such, I do not find that this alleged change in the terms of the tenancy provided a legal justification for the tenant to end the tenancy on the day that it commenced.

Having found that there was an oral tenancy agreement, the tenant was required under section 45 of the Act to provide sufficient notice to end the tenancy. While the evidence was unclear as to what the term of the tenancy would have ultimately been (that is, a fixed term or periodic tenancy), at a minimum the tenant was required to give the landlord at least one month's notice. He did not. As such, I find that the tenant breached the Act. But for the tenant's breach of the Act, the landlord would not have suffered the loss of rent as claimed. Finally, the landlord claims that the rent was $1,200.00. The tenant did not dispute that. I find that the landlord has therefore proven the amount of the loss of rent.

Finally, did the landlord do whatever was reasonable to minimize the damage or loss? I find that he did. He testified that "as soon as [tenant] said he cannot rent, I advertised again." He listed the rental unit for the same rent. He showed the rental unit to several people, though most people wanted to rent the rental unit on the first of the month. Finally, he was able to find a new tenant on June 9, 2018, but that the new tenant would

not move into the rental unit until July 1, 2018.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for compensation for the loss of one month's rent in the amount of $1,200.00.

While the landlord asked for, and obtained, a security deposit in excess of what is permitted by the Act, given that the landlord has proven his claim in the amount of $1,200.00, I find that the landlord is entitled to retain the entire $1,200.00 in full satisfaction of the award.

However, in recognizing and acknowledging that the landlord did, in fact, ask for a security deposit more than what is permitted by the Act, I decline to grant the landlord a monetary order in the amount of $100.00 for recovery of the filing fee.

Conclusion

I hereby order that the landlord retain the tenant's security deposit of $1,200.00. However, I dismiss the landlord's monetary claim for $100.00 for the filing fee.

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: November 28, 2018

Residential Tenancy Branch