



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMELLIA LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on November 7, 2018. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was signed for and accepted by the tenant. The landlord also provided Canada Post tracking information to reflect that the landlords' documentary evidence was served to the tenants by way of registered mail on February 14, 2019 and was signed for and accepted. The landlord provided all tracking numbers and receipts to support this. Based on the submissions of the landlord, I find the tenants were served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenants.

Issue to be Decided

Is the landlord entitled to a monetary award for loss or damage arising out of this tenancy?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The one year fixed term tenancy began on November 1, 2018 and ended on the same day. The tenants were obligated to pay \$1400.00 per month in rent. No security deposit was provided. The landlord testified that on November 1, 2018 the tenant advised the landlord that the unit was "uninhabitable" and would not be moving in. The landlord advised that there was some small cosmetic painting and caulking touch ups required but the unit was suitable for tenancy. The landlord testified that the tenants did not provide an opportunity for the landlord to remedy the situation or even have a conversation with the tenants. The landlord testified that the tenants abruptly ended the tenancy with no further communication. The landlord seeks the rent for the month of November 2018 and the liquidated damages of \$700.00 as agreed upon and signed in their tenancy agreement, along with the recovery of the \$100.00 filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

The landlord submitted extensive documentation and photos to reflect the condition of the unit. I find that the unit was suitable for rental and further agree with the landlord that there was only a small amount of cosmetic work that would not have prevented the tenants from moving in.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from November 1, 2018 to October 31, 2019.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant terminated the tenancy on the first day without providing a reasonable and sufficient amount of time for the landlord to address any concerns. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted numerous online rental advertisements immediately. The landlord was able to re-rent the unit for December 2018. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website, as such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks one month of rental loss for November 2018, the period during which the property could not be re-rented due to the tenant's breach. The liquidated

damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$1400.00 for a loss of November 2018 rent.

Liquidated Damages

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result, will be unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach. The next question is whether the \$700.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$700.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the addendum, stating that he is responsible for this cost. Accordingly, I find that the landlord is entitled to \$700.00 for liquidated damages from the tenant

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$2200.00. I grant the landlord an order under section 67 for the balance due of \$2200.00. This order may be filed in the Small Claims 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: March 07, 2019

Residential Tenancy Branch