



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and both Tenants were present for the duration of the teleconference hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenants’ evidence and it was confirmed that it was received within the required timeframe when questioned by the Landlord. Neither party brought up any additional issues regarding service of documents.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards any compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2018 and ended on or around November 28, 2018. Monthly rent in the amount of \$2,100.00 was due on the first day of each month. A security deposit of \$1,050.00 was paid at the outset of the tenancy and is still held by the Landlord. The tenancy agreement was for a fixed term of one year, set to end on July 31, 2019. The tenancy agreement was submitted as evidence and confirms the details as stated by the parties.

The Landlord has claimed compensation for three months of unpaid rent for a total of \$6,300.00. As the Landlord is still in possession of the security deposit in the amount of \$1,050.00, he has applied to retain this towards the amount owing and is therefore seeking an additional \$5,250.00.

The Landlord testified that he received a text message from the Tenants on November 15, 2018 stating that due to a loss of employment they would be ending their tenancy for January 1, 2019. The text message was submitted as evidence and in the message the Tenants ask if the Landlord would like written notice as well and the Landlord declines.

The Landlord stated that the rental company he had hired began advertising the rental unit right away in November 2018 through online websites as well as their own rental advertisements. The Landlord provided testimony that the rental unit was advertised for the same monthly rent of \$2,100.00 but was reduced to \$1,950.00 in February 2019 when the unit had not yet been rented. The Landlord stated that they were able to re-rent the unit for \$1,950.00 beginning on March 15, 2019. Therefore, the Landlord is claiming unpaid rent from the Tenants for December 2018, January 2019 and February 2019.

The Landlord testified that there was a prospective new tenant who was able to rent the unit for December 1, 2018, but that it did not work out. He stated that the unit was initially advertised for December 1, 2018 as he knew the Tenants wanted to move out as soon as possible and regardless of what the advertisement stated, arrangements could be made for when the new tenants were able to move in.

The Tenants stated that due to a sudden layoff, they provided notice to the Landlord on November 15, 2018 to move out by January 1, 2019. They stated that a couple of days

later, they received a phone call from the management company asking them to be ready for showings. The Tenants stated that during this phone conversation, the agent advised them that there were new tenants ready to move in for December 1, 2018 and asked if they could move out by then.

The Tenants stated that they were confused due to providing notice to end the tenancy at the end of December 2018, so they sent a text message to the Landlord to obtain clarification. The text message dated November 17, 2018 was submitted as evidence. The text message from the Tenants states the following:

We just received a call from [property management company] about a showing tomorrow. We will get ready for that. Just wondering if you could clarify something. She told us these would possible be tenants for December 1? Could you let us know?

The Landlord responded asking if the Tenants could do December 1st and the Tenants responded that they could make arrangements and to let them know. The Tenants also submitted a copy of the online advertisement for the rental unit which stated that it was available for December 1, 2018 and they questioned why this was the date when they were going to remain living there throughout December 2018.

The Tenants further testified that while it was a rush to move out by December 1, 2018, they did so to accommodate the new tenants and the Landlord. They stated that there was no further discussion with the Landlord about any additional rent owing and instead, since the Landlord accepted their notice to end the tenancy they believed that they were no longer responsible for the rent.

The Tenants stated that they thought that the Landlord would keep the security deposit as compensation for ending their fixed term tenancy agreement early. They stated that they did not provide their forwarding address.

The Landlord stated his position that there is no evidence that that Tenants were asked to move out early by December 1, 2018. The Tenants stated their position that they provided notice to end the tenancy at the end of December 2018 through text and email and only moved out earlier due to a request from the property management company with confirmation from the Landlord.

Analysis

Section 45(2) of the *Act* states the following:

- (2) 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.

Therefore, while the Tenant's notice to end the tenancy was accepted by text message on November 15, 2018, the Tenants were not in compliance with the *Act* by ending their tenancy prior to the end of the fixed term.

As stated in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, a tenant may still be responsible for rent if ending a tenancy early, to put the landlord in the same position up to the point where the tenancy could legally have been ended. As stated in this policy guideline, as well as Section 7 of the *Act*, a party claiming a loss also has a duty to take reasonable steps to mitigate their loss.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord has the burden of proof to establish that he experienced a loss due to the Tenants' breach of the *Act* as well as that reasonable steps were taken to mitigate any potential losses.

Upon review of the text message and email communication between the parties, I do find sufficient evidence to establish that the Landlord told the Tenants to move out early by December 1, 2018. Instead, I find that an earlier move out date was suggested, and the Tenants moved forward with moving out early before confirmation was provided.

As the Tenants provided notice to end the tenancy on November 15, 2018, I find that it would likely have been difficult to find new tenants for December 2018. I also find evidence that the Landlord advertised the rental unit in November 2018 as shown on the advertisement submitted into evidence by the Tenants which also confirms that the Landlord was seeking the same monthly rent amount. Therefore, I find that the Landlord took reasonable steps to minimize the potential loss of rental income for December

2018. Accordingly, I find that the Tenants still owed rent for December 2018 as due on December 1, 2018 in the amount of \$2,100.00.

As for rent for the months of January and February 2019, while the Tenants may have owed rent for these months if the Landlord was unable to find new tenants, I am not satisfied that the Landlord took reasonable steps to mitigate any potential losses. As stated, the Landlord has the burden of proof to establish his claim. I find insufficient evidence from the Landlord regarding the efforts he took to re-rent the unit after receiving notice from the Tenants. While the Tenants submitted the rental advertisement posted in November 2018, the Landlord did not provide further evidence regarding the attempts to rent the unit such as evidence to demonstrate advertisements, communication with prospective new tenants, information about the showings of the unit, or a new tenancy agreement.

As such, I do not find that the Landlord met the burden of proof to establish that he took reasonable steps to mitigate any potential losses, which is required under Section 7 of the *Act*. Therefore, I decline to award any additional compensation to the Landlord beyond compensation for December 2018 rent.

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of the end of tenancy or the date the tenant's forwarding address is provided in writing to return the security deposit. As the Tenants stated that their forwarding address was not provided to the Landlord, I find that the Landlord was within his rights to retain the security deposit until it was provided. I also note that the security deposit is not automatically held due to ending a fixed term tenancy early. A security deposit must be dealt with in accordance with Section 38 of the *Act*.

However, as the Landlord still has the security deposit, he may retain this towards the amount owed. As the Landlord was partially successful with the application, pursuant to Section 72 of the *Act*, I also award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00. The Landlord is provided a Monetary Order in the amount outlined below:

December 2018 rent	\$2,100.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,050.00)</i>
Total owing to Landlord	\$1,150.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,150.00** for rent owed for December 2018 and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: May 08, 2019

Residential Tenancy Branch