



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that they served each tenant with their application for dispute resolution via registered mail on February 22, 2019. The landlords provided the Canada Post tracking numbers to confirm these registered mailings. According to the Canada Post tracking website the packages were both picked up and signed for on February 26, 2019. I find that service of the landlord's application for dispute resolution was effected on the tenants on February 26, 2019, pursuant to section 89 of the *Act*.

The landlords testified that the tenants were each served with their amendment which corrected the spelling of tenant K.M.'s last name, via registered mail on May 17, 2019. The landlords provided the Canada Post tracking numbers to confirm these registered mailings. I find that the tenants were deemed served with the landlords' amendment

packages on May 22, 2019, five days after their mailing, in accordance with section 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlords' original application claimed a loss of rental income in the amount of \$1,400.00. Since filing for dispute resolution, the landlords testified that the loss of rental income has increased to \$2,800.00.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlords are seeking compensation for all of their loss of rental income, not just the loss on the date the landlords filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' application to include a monetary claim for all loss of rental income in the amount of \$2,800.00.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on November 1, 2018 and ended on January 31, 2019. This was originally a fixed term

tenancy set to end on October 31, 2019. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified to the following facts. On January 2, 2019 the tenants texted the landlords and advised that they were vacating the subject rental property on February 1, 2019. The January 2, 2019 text was entered into evidence. The landlords started advertising the subject rental property for rent on January 4, 2019. An advertisement for same was entered into evidence. The landlords testified that they put up a second add on a different website on February 13, 2019. This advertisement was entered into evidence. The landlords testified that they regularly renewed their advertisements to increase viewership. The landlords testified that they told their friends and family that they were looking for new tenants.

The landlords testified that despite their best efforts they were unable to get new tenant for February or March 2019 but were able to find new tenants for April 1, 2019. The landlords are seeking loss of rental income for the months of February and March 2019 in the amount of \$2,800.00

Analysis

Under section 7 of the Act a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlords were to receive under the tenancy agreement. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit as soon as possible.

I find that the landlords acted in an expedient manner by advertising the subject rental property for rent two days after learning that the tenants intended on breaching their fixed term tenancy. I find that the landlords mitigated their damages by frequently renewing their online advertisements in an attempt to find new tenants. I therefore find that the landlords are entitled to recover \$2,800.00 from the tenants for lost rental income for the months of February and March 2019, pursuant to sections 7 and 67 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
February 2019 loss of rental income	\$1,400.00
March 2019 loss of rental income	\$1,400.00
Filing Fee	\$100.00
TOTAL	\$2,900.00

The landlords are 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: June 06, 2019

Residential Tenancy Branch