



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$9,200.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

Landlord DW (landlord), a support person for the landlord CC (support) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. The parties confirmed that they received and reviewed the documentary evidence from the other party prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant denied having been served with the landlord's application, which I found could not have been the case as the tenant called into the hearing using the access code provided on the landlord's application. There is not indicating in the audit call log that the tenant called into to find out what the access codes were for the hearing. As a result, and without any evidence to support to the contrary, I find that both parties were sufficiently served in accordance with the Act.

Issue to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2019 and was scheduled to revert to a month to month tenancy after May 31, 2020. The monthly rent was \$1,400.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 7 months of unpaid rent/loss of rent	\$9,800.00
2. Filing fee	\$100.00
TOTAL	\$9,900.00

Regarding item 1, the landlord is claiming \$9,800.00 for 7 months of lost rent at \$1,400.00 per month. The landlord referred to an email from the tenant to the landlord dated September 25, 2019, which states in part that the tenant was providing a 30-day notice to end the tenancy as of October 31, 2019. The tenant did not state the reason why they were ending the tenancy on the email dated September 25, 2019.

In terms of the landlord's attempts to re-rent the rental unit, the landlord confirmed under oath that they began to post the ad for the rental unit being available as of September 27, 2019. The landlord stated that the monthly rent was first listed as \$1,600.00 per month for the first 2 of 5 paid ads, and then as of October 25, 2019, the last 3 ads were reduced to \$1,500.00 per month. The landlord was asked why they used an amount higher than the monthly rent, to which the landlord stated that the tenant was given a reduction in the monthly rent and as a result, the rental was increased when the tenant breached the fixed-term tenancy.

The tenant's position was that they felt that the tenancy agreement was a month to month tenancy as the landlord failed to provide a written copy of the tenancy agreement within 21 days of the start of the tenancy, which was June 1, 2019.

The tenant and landlord referred to a November 26, 2019 email from the tenant, which included the tenant's written forwarding address. The landlord applied against the tenant's security deposit 2 days later on November 28, 2019.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – I will first deal with the tenant's argument that the tenant reverted to a month to month tenancy due to the tenant claiming that the landlord did not provide a copy of the

tenancy agreement in writing within 21 days of the start of the tenancy. Section 13(3) of the Act applies and states:

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

The Act does not state that a fixed-term tenancy agreement reverts to a month to month tenancy if a copy of the tenancy agreement was not provided by the landlord to the tenant. As a result, I find the tenant has failed to provide sufficient evidence that the tenancy agreement was not a fixed-term tenancy. I find that the tenancy agreement remained a fixed-term tenancy and that it was not scheduled to revert to a month to month tenancy after May 31, 2020.

Item 1 – Given my finding above, which finds that the tenancy remains a fixed-term tenancy, regardless of the tenant's argument, which I do not accept due to insufficient evidence, I find that section 45(2) of the Act applies and states:

Tenant's notice

45(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.**

[Emphasis added]

Given the above, I find that the tenant had no right under the Act to provide a written notice earlier than May 31, 2020. Accordingly, I find that the landlord has met the burden of proof for rent owed for November 2019. Therefore, I grant the landlord **\$1,400.00** for unpaid rent for November 2019.

Regarding the 6 other months being claimed by the landlord, I find the landlord failed to meet part four of the four-part test for damages or loss described above, which required

the applicant to minimize their damage or loss. Furthermore, I find the landlord failed to comply with section 7 of the Act, which also states:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added]

Based on the above, I find the landlord failed to minimize their loss by advertising the rental unit for \$200.00 more per month than the original tenancy, and \$100.00 more for the remaining 3 ads and that at no time did the landlord place the rental unit at the original amount of rent and by doing so, I find failed to comply with section 7 of the Act and part four of the four-part test for damages or loss.

In addition, Residential Tenancy Branch Policy Guideline 5 – Duty to Minimize Loss applies and states the following:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. **Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.**

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

[Emphasis added]

Consequently, I find the landlord attempted to advertise the rental unit for an amount higher than what the market will bear as the landlord had was unable to re-rent for the entire 7 months claimed, which supports my finding. Further, I find the landlord has failed to meet part four of the test for damages or loss and as a result of breaching section 7 of the Act, I dismiss the landlord's request for loss of rent for the period of December 2019 to May 2020 inclusive due to insufficient evidence, without leave to reapply.

Item 2 - As the landlord's application had some merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find that the landlord has established a total monetary claim in the amount of **\$1,500.00** pursuant to section 67 comprised of \$1,400.00 for item 1, plus \$100.00 for item 2. As the landlord continues to hold the tenant's security deposit of \$700.00, which I find has accrued \$0.00 in interest since the start of the tenancy, I authorize the landlord to retain the tenant's full \$700.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlords in the amount of **\$800.00**.

Conclusion

The landlords' claim is partially successful.

The landlord has established a total monetary claim in the amount of \$1,500.00 and has been authorized to retain the tenant's full \$700.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlords in the amount of \$800.00.

The remainder of the landlord's monetary claim is dismissed, without leave to reapply, due to insufficient evidence.

Should the landlord require enforcement of the monetary order, the monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 20, 2020

Residential Tenancy Branch