



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for rent and/or utilities in the amount of \$11,000.00, and to recover the \$100.00 cost of their Application filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

At the beginning of the hearing, when I read the Landlord's Application, they said they

had changed the amount they are claiming to \$13,200.00; however, they did not submit an amendment to their Application, nor did they advise the Tenants of this change. When I said it would be inappropriate for me to consider this, as it was not something that the Tenants could have anticipated, the Landlords said they would go back to the original amount they seek, which is \$11,000.00.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that they signed a fixed term tenancy agreement that was to begin on September 1, 2019, and was to run to August 31, 2020. They agreed that the terms of the tenancy agreement included that the Tenants would pay the Landlords a monthly rent of \$2,500.00, due on the first day of each month, and a security deposit of \$1,250.00. The Parties agreed that the Tenants did not pay the Landlords this security deposit. The Parties agreed that the Tenants never moved into the rental unit, because they decided to terminate the tenancy agreement before September 1, 2019.

The Tenants testified that they were living a significant distance from the location of the residential property, prior to moving to that location for school. They agreed that they contacted the Landlords, showing interest in the rental unit in July 2019; however, the Tenants were unable to visit the residential property, due to their personal circumstances at the time.

The Landlords and the Tenants testified that they continued to communicate about the rental unit in July and August. The Landlords sent them photographs and they used an online communication tool, so the Tenants could see the rental unit. The Parties agreed that based on these interactions, they signed the fixed term tenancy agreement on August 7, 2019.

The Tenants were able to visit the rental unit on August 19, 2019; however, after the visit, they decided they did not think the rental unit was suitable for their purposes. One of the Tenants texted or emailed the Landlords to advise that they wanted to terminate the tenancy agreement.

The Tenants said in the hearing that they thought the photographs and online

communications had misrepresented of the condition of the rental unit. The Tenants said it was quite small and smelled of urine. They said the photographs in the advertisements were taken after an earlier renovation, and that the photographs did not reflect the rental unit's current condition. They said: "We would not have signed the lease, if we had seen it in person." They said this left the Landlords nearly two weeks to find other tenants.

The Landlords questioned the Tenants' claim of misrepresentation. They said:

I was hit really hard for this. Misleading somebody really hit me hard. We tried our best to help them with their situation. We didn't even take the deposit from them. We tried to help them with their situation, and now we're accused of misleading them. We really liked them and wanted to have them as tenants. I still believe they are good guys and clean, so I still have the same position.

The Landlords said they did not want to use photographs and the online communication tool to show the rental unit; they wanted the Tenants to see the rental unit in person. They said they liked the Tenants, but they "...lost precious time for having students as tenants. We could only rent the property in January 2020." The Landlords said they had to lower the rent by \$500.00 a month to secure this tenant.

The Parties agreed that the Tenants tried to help the Landlords find new tenants by advertising for renters. The Tenants said:

One person out of the 13 contacted us on August 29, but they turned her down, when no one else was interested in signing for September 1st. This speaks clearly to the condition of the unit. It still gave them a lot of time, in which they received many, many interested people.

In their Application, the Landlords stated:

Although the tenants signed a fixed-term 12-month tenancy agreement with us, they decided to abandon the agreement. The amount requested above includes the total of unpaid rent from Sep. 1, 2019, to Nov 15, 2019 (2500\$ per month), plus the reduction in rent for the remaining months (500\$ per month).

The Tenants submitted texts from potential tenants, which explains why they did not want to take the rental unit. The first text states:

Had to park a cross the street. I don't think there was a washer dryer. Very cramped and old. Shitty kitchen. I believe way over priced. The guy was very eager to rent it out to me wanted me to sign immediately. I was also told by my girlfriend who lives near by that she notice people moving in and out very often. So thought maybe it wasn't a good idea if no one wanted to stay there.

The second text states:

sent a bunch of screenshots of emails from the people who were interested. we made the mistake of signing it before seeing it and were pretty horrified for the same reasons that you just listed.

He also told me he wanted short term because in the spring time he wanted to rent to students for 1000 a room

The Tenants also shared emails received from three other potential tenants who were interested in seeing the rental unit, based on the advertisement that the Tenants placed. The Tenants submitted communications that they had with two other people in late August 2019, trying to find tenants for the Landlords.

Analysis

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

Section 16 of the Act sets out parties' rights and obligations that arise upon the parties signing a tenancy agreement.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 7 states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results.

Section 67 of the Act allows for an arbitrator to determine the amount of compensation to be awarded to a party if another party has not complied with the Act, the regulations

or a tenancy agreement.

The claimant must prove the existence of damage or loss on a balance of probabilities. Further, the claimant must establish that the damage or loss stemmed directly from a violation of the tenancy agreement or a contravention on the part of the other party.

Section 44(1)(b) addresses how a fixed-term tenancy can end:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

...

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

Section 45(2) of the Act states that a tenant cannot end a fixed term tenancy before the stated end date of the tenancy agreement. I find that the Tenants breached the fixed-term tenancy agreement by ending the tenancy earlier than the end date set out in the agreement. Furthermore, I am satisfied that the Landlords suffered a loss of rent from the Tenants' breach of the tenancy agreement, by having the rental unit vacant from September 1, 2019 until January 1, 2020.

However, given the Tenants' comments on the deficiencies they found in the rental unit when they visited it in person, along with the text comments from other potential tenants, I find it more likely than not that the Landlords have over-priced the rental unit for the market, given the condition of the rental unit. As such, I find that it is reasonable in the circumstances that the Landlords had to lower the rent to find another tenant. As such, I decline to award the Landlords with recovery of the difference between what the Tenants agreed to pay and what the January 2020 tenant pays.

Based on the evidence before me, overall, I find that the Tenants endeavoured to find new tenants for the Landlords initially; however, I find that their efforts did not appear to continue beyond August 2019.

I grant the Landlords a monetary award for their claim for unpaid rent from September 1, 2019, to November 15, 2019, which equates to two and a half months rent at \$2,500.00 per month for a total of \$6,250.00, pursuant to section 67 of the Act. I also award the Landlords recovery of their \$100.00 Application filing fee for a total Monetary

Order of **\$6,350.00**, pursuant to section 67 of the Act.

Conclusion

The Landlords are partially successful in their Application for compensation from the Tenants in the amount of \$6,250.00, as the Tenants breached a fixed-term tenancy agreement, contrary to section 45(2) of the Act. I also award the Landlords with recovery of their \$100.00 Application filing fee for a total monetary order of **\$6,350.00**.

This Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 6, 2020

Residential Tenancy Branch