



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on August 10, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's Notice of Hearing, and evidence, and did not take issue with the service of these packages. The Tenants sent, and the Landlord received his evidence package. The Landlord did not take issue with the first package sent to him, including the Tenant's evidence of "counterclaim". However, since the Tenant failed to provide the most recent upload (on August 10, 2020) to the Landlord, within the acceptable time frame, according to the Rules of Procedure, (the Landlord had to receive all of the respondents evidence no later than 7 days before the hearing), I find it is not admissible, and will not be considered further.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that the Tenant was under a fixed term lease from November 1, 2019, until April 30, 2020. The Landlord selected that the Tenant must move out at the end of the fixed term. The Landlord did not initial this section, nor did he indicate under what section of the Act the Tenant must vacate. No further written agreement or amendment was made to this agreement.

Monthly rent was set at \$2,650.00 and was due on the first of the month. The Landlord still holds a \$1,325.00 security deposit and a \$500.00 pet deposit.

The Landlord stated that the Tenants failed to pay any rent for April, May, or June 2020. Both parties agree that the Tenants vacated the rental unit on May 30, 2020, which was the last day of the tenancy. The Tenants do not dispute that they did not pay any rent for April onwards, aside from the rental subsidy,

The Landlord stated that he received a \$300.00 rental subsidy from the government, which was applied towards May rent. However, the Landlord stated that he returned the other rental subsidies received in June, because the Tenants had already moved out.

The Landlord is seeking rent for April, May, and June because the Tenants failed to give proper Notice, and they lived in the unit until the end of May 2020.

The Tenant and the Landlord both provided copies of emails they had with each other, which highlight that there was some financial troubles, many discussions regarding when the tenancy would end, how it would end, what should be done with the security deposit, and what money was owed.

The Landlord stated that he never got any formal written Notice from the Tenant regarding when he would be moving out, only emails speaking about different options and timelines. There was an email on May 4, 2020, where the Tenants are taking issue with the Landlord's behaviour, and offer to leave by June 1, 2020, as long as his

deposits were returned. The Landlord stated he got another email from the Tenant on May 20, 2020, as part of a broader email chain, whereby the Tenant indicates he was planning on moving out at the beginning of June 2020. The Landlord stated he took this email to mean that the Tenant was responsible for rent until June 19, 2020, which was one month after he got this email.

The Tenant stated that the Landlord promised them a free month rent, and that this was agreed upon, but he was unable to prove this was agreed upon, in writing. The Landlord does not agree that he offered a free month (May 2020). The Tenants feel the Landlord gave them so much false information and he was aggressive, such that they feel they were wrongfully evicted. The Tenant stated that he is due a free month rent for his eviction without cause, but was unable to explain what he is basing this upon, or under which portion of the Act this is due.

The Landlord stated that he has not re-rented the unit since the Tenant moved out at the end of May. The Landlord indicated that he hired a property manager to re-rent the unit, "sometime in June", and he advertised it for \$3,200.00. It is unclear when this was posted, or how long it was posted for. The Landlord stated that the unit was not currently listed for rent but that he does have another company involved in trying to re-rent and they may have an internal database of potential renters. The Landlord did not elaborate further on this matter or what else he did to mitigate his loss for June, after the Tenant left.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the issue regarding the fixed term tenancy agreement. I note this agreement was provided into evidence and that no document was provided amending or altering this agreement in writing. I find it important to note the following excerpt from Policy Guideline #30 – Fixed Term Tenancies:

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable:

- *The tenancy agreement is a sublease agreement;*
- *The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation; or*
- *If one of the following occurred before October 26, 2017:*
 - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or*
 - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.*

There is insufficient evidence that the Landlord meets any of the above criteria or section 13.1 of the Regulations, which specify that he or a close family member must move into the unit and this was clearly laid out in the tenancy agreement. I find this vacate clause was not clearly laid out, and is not an enforceable term. I find the tenancy agreement was a fixed term agreement, running from November 2019, until April 30, 2020, and after that time, it reverted to a month-to-month tenancy, given the Tenant was not legally obligated to vacate under that clause.

I note the following portions of the Act:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

How a tenancy ends

- 44 (1)A tenancy ends only if one or more of the following applies:*
- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
 - (i)section 45 [tenant's notice];*
 - (i.1)section 45.1 [tenant's notice: family violence or long-term care];*
 - (ii)section 46 [landlord's notice: non-payment of rent];*
 - (iii)section 47 [landlord's notice: cause];*
 - (iv)section 48 [landlord's notice: end of employment];*
 - (v)section 49 [landlord's notice: landlord's use of property];*
 - (vi)section 49.1 [landlord's notice: tenant ceases to qualify];*
 - (vii)section 50 [tenant may end tenancy early];*

- (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;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

Tenant's notice

- 45** (1) *A tenant may end a periodic 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, and*
 - (b) 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.*

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Form and content of notice to end tenancy

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form.*

Having reviewed the emails and communications between the parties, I do not find any of the emails from the Tenant to the Landlord are sufficiently clear, in writing, and in compliance with the form and content requirements. The statements were part of a broader discussion, and are not sufficiently clear, and distinct as to count as a formal written Notice to End Tenancy from the Tenant. Also, the email does not contain the

address of the rental unit or the Tenant's signature. I find the Tenants failed to give valid Notice, in compliance with section 45 of the Act, and there is insufficient evidence that they had any legal basis to end the tenancy in the manner they did, by leaving at the end of May 2020. There is insufficient evidence that any clear agreement was reached regarding what rent was owed, and when the tenancy would end. As such, the parties were bound by the Act, and the tenancy agreement, which was month-to-month at that time.

I find the Tenant owes rent, in full for April and May, less the amount the Landlord received as a rent subsidy (\$300.00), given he resided in the unit for that time, and given there is insufficient evidence he is entitled to a free month's rent.

With respect to June rent, I note the tenancy ended at the end of May 2020, under section 44(d) of the Act, when the Tenant vacated the unit. The manner in which the Tenant vacated was in contravention of his obligations to give proper written Notice. I am satisfied that the Landlord suffered a loss for the month of June, and the unit is still empty. However, after the Tenant vacated the unit, the Landlord was obligated to mitigate his losses by attempting to re-rent the unit, as soon as reasonably possible, at a reasonable economic rent.

I note the Landlord was vague with respect to when the unit was reposted, and it appears the unit was reposted for substantially more rent than what the Tenants were paying (\$3,200.00 versus \$2,650.00). I find this likely contributed to the Landlord's inability to procure new tenants. It is not clear what other steps were taken to mitigate the losses for June onwards. I find the Landlord has failed to sufficiently mitigate his losses after the Tenant vacated. I dismiss his request for compensation for June onwards, without leave to reapply.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

<u>Claim</u>	<u>Amount</u>
Unpaid Rent (April and May 2020)	\$5,300.00
Filing fee	\$100.00
Less:	
Rent subsidy already rec'd for May 2020	(\$300.00)
Security and pet Deposit currently held by Landlord	(\$1,825.00)
TOTAL:	\$3,275.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$3,275.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: August 10, 2020

Residential Tenancy Branch