Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

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

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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 landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified he served the tenant with the Notice of Dispute Resolution Proceedings package by emailing it to the tenant at the email address provided to him on the tenancy agreement. The email was sent on June 3, 2020 at 5:39 p.m. The landlord testified he has not had any communication from the tenant since sending the email.

I have reviewed the tenancy agreement and sought confirmation from the landlord that the email address he sent the Notice of Dispute Resolution Proceedings package to and the one provided on the tenancy agreement are identical. The landlord affirmed this and testified he's received emails from the tenant from that email address in the past. I am satisfied the tenant was properly served with the Notice of Dispute Resolution

Proceedings package in accordance with the Residential Tenancy Branch director's order dated March 30, 2020 allowing for service by email that was in effect at the time of service. In accordance with that order, the Notice of Dispute Resolution Proceedings package is deemed served on June 6, 2020, three days after being sent by email.

This hearing was conducted in the absence of the tenant in accordance with rule 7.3 of the Residential Tenancy Branch rules of procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or damages?
Can the landlord retain the security deposit?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on October 1, 2018 with rent set at $2,000.00. A security deposit of $1,000.00 was collected by the landlord which he continues to hold. A second tenancy agreement was signed on September 4, 2019 for a fixed term commencing October 1, 2019, scheduled to end on September 30, 2020. Rent was increased to $2,050.00 per month.

The landlord testified the tenant ended the tenancy by email on May 1, 2020 indicating he intends to leave early. Rent for the month of May was paid and the tenant sent a second email on May 21, 2020 at 1:35 p.m. stating he had vacated the rental unit as of May 18th. None of the emails were provided as evidence by the landlord.

The landlord was unable to testify as to whether the tenant provided a forwarding address to him at any time. I asked the landlord where he obtained the address for the tenant supplied on his Application for Dispute Resolution and the landlord advised his agent provided it to him. No written notice of forwarding address was provided for this hearing.

The landlord testified that the rental unit was being handled by an agency who locates corporate tenants to rent units for periodic terms. The landlord testified the agent likely sought a new tenant for June 1st, however no evidence of this was provided for the hearing and the landlord's agent was not called to testify. The landlord further testified that the agent found a tenant willing to rent the unit for the month of July and another tenant willing to sign a tenancy agreement commencing August 1st. The landlord seeks to recover rent for the month of June for the single month the rental unit remained empty.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Residential Tenancy Policy Guideline PG-5 [Duty to Minimize Loss] provides guidance to landlords and tenants in situations where tenants end tenancies before the end of the fixed terms. Point 4 of the 4-point test (above) is more fully examined. It states:

> ***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.

In this case, the landlord testified the tenant notified him and his agent that he left the rental unit on May 18th. While the landlord seeks to recover rent for the month of June, the only evidence he's provided to show he tried to re-rent the unit for that month is his testimony. The landlord testified that his agent used his connections to locate another corporate tenant for the unit, however the agent was not called to testify and no proof of advertising the vacancy was supplied for this hearing. As stated above, the applicant has the burden to provide sufficient evidence to establish each of the four points, including the last point: steps taken to mitigate the damage or loss.

I find the landlord has provided insufficient evidence to establish that he took any of the steps necessary to secure a tenant for the month of June. For this reason, I dismiss the landlord's application to recover rent for that month.

The landlord continues to hold the tenant's security deposit. The landlord's second issue in his Application for Dispute Resolution is actually to retain the security deposit, not to seek compensation for damages. Pursuant to section 38 of the Act, a landlord must return the tenant's security deposit within 15 days after the tenancy ends or the date he receives the tenant's forwarding address in writing. I do not have any evidence before me that the landlord ever received the tenant's forwarding address in writing. I find the landlord's application to retain the security deposit is therefore premature and I dismiss it with leave to reapply if the tenant provides the landlord with his forwarding address in writing in the future. If the tenant does not provide a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit in accordance with section 39 of the Act.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

The application for a monetary order for rent is dismissed without leave to reapply.

The application to retain the security deposit is dismissed with leave to reapply.

The application to recover the filing fee is dismissed without leave to reapply.

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: October 1, 2020

Residential Tenancy Branch