Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

In this dispute, the landlord seeks compensation for loss of rent in the amount of $1,800.00, pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). In addition, they seek recovery of the $100.00 filing fee pursuant to section 72 of the Act.

The landlord filed an application for dispute resolution on May 6, 2020 and a dispute resolution hearing was first held on September 4, 2020, and then adjourned to October 19, 2020 for the purpose of allowing each party to ensure that they serve the other party with any evidence on which they intended to rely. The landlord's agent, and the two tenants, attended the second hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. Unable to attend the hearing was the landlord, who was travelling in Mexico.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to compensation for loss of rent as claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy began on June 1, 2019. It was a fixed-term tenancy that was supposed to end on May 31, 2020, but the tenants ended it early on December 31, 2019. Monthly rent was $1,800.00 and the tenants paid a security deposit of $900.00, which the landlord returned on January 16, 2020. A copy of the written tenancy agreement was submitted into evidence.

On November 30, 2019, the tenants gave notice to the landlord that they were ending the tenancy and vacating the rental unit effective December 31, 2019. The one-page letter stated that the tenants were ending the tenancy early because of various issues they had with the landlord. They felt, and the landlord seemed to make it clear to them, that the landlord did not really want to be in the business of being a landlord. The landlord was a “frequent flier” who enjoys travelling overseas, and the business of managing a property seemed to present some difficulty for him. “The landlord was very clear that he wanted us [the tenants] to deal with issues that came up,” the tenant M.M. explained. Briefly, the landlord appointed his daughter to act in his stead, though the tenants never met the daughter and there was some miscommunication between the landlord and his daughter about the property.

The tenants ended the tenancy early because they were “not comfortable in continuing to rent from this landlord” and did not want to stay somewhere where “the landlord had no interest in managing.” The tenants agreed to accept full responsibility for finding a new tenant, and they undertook all the work necessary in placing ads, conducting showings, answering questions from prospective tenants, and so forth.

According to the tenants, the landlord did not have any communication with any of the prospective tenants; he apparently “turned down and ignored other tenants,” said the tenants. Eventually, and not too long into December, the tenants found a new tenant. However, that tenant was only able to take possession on February 1, 2020. It should be noted that the landlord was out of the country during December 2019.

The landlord’s agent submitted that the landlord seeks compensation for the loss of rent for January 2020. The tenants paid rent for December 2019 and the new tenant paid rent for February 2020, thus, a month of rent was lost. This loss would not have occurred otherwise given that it was a fixed-term tenancy. $1,800.00 is the amount of compensation for loss of rent being sought by the landlord. In addition, he seeks the application filing fee of $100.00.

In respect of the landlord’s efforts at finding a new tenant after he received the tenants’ notice to end tenancy on November 30, 2020, the landlord’s agent testified that “he [the landlord] was of the opinion that it was up to the tenants to find a new tenant” and that “it was their responsibility.” The landlord, however, “appreciated their [the tenants’] assistance” in finding new tenants.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded (the "four-part test"):

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.
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> (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.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

First, the landlord's claim is that the tenants breached the Act and the tenancy agreement (which resulted in a financial loss) by ending the tenancy early and not in compliance with the fixed-term tenancy agreement.

Section 45(2) of the Act deals with the method by which a tenant must end a fixed term tenancy. This section of the Act reads as follows:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.

Prima facie, the tenants did not comply with section 45(2) of the Act. However, section 45(3) of the Act is often invoked by tenants (though it was not specifically or explicitly relied upon by the tenants in this case). That section states that

> If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this dispute, there is no evidence that the landlord failed to comply with a material term of the tenancy agreement and that he did not correct the situation within a reasonable period after the tenants gave written notice of the failure. While there was some testimony regarding reimbursement for furnace costs, this was not extensively dealt with and there is insufficient evidence for me to find that the tenants had a right under section 45(3) of the Act to end the tenancy. Therefore, I find that the tenants breached the tenancy agreement by not giving notice in compliance with section 45(2) of the Act. Thus, the first criterion of the four-part test is met.

Having found that the tenant breached the Act, I must next determine whether the landlord's loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, the landlord's loss of rent would not have occurred but for the tenants' breach of the tenancy agreement. This second criterion is therefore satisfied.

Third, the landlord has proven that the amount of the loss was $1,800.00. That is the amount of the rent, and there is no doubt that no one paid the rent for January 2020.

Finally, as per the fourth criterion, it must be asked: did the landlord do whatever was reasonable to minimize his loss of rent for January 2020? I find that not only did the landlord not do whatever was reasonable to minimize his loss, he in fact did nothing. Rather, he incorrectly presumed that it was entirely the tenants' responsibility to find a new tenant. The responsibility for finding a new tenant – that is, the duty to mitigate a loss, which is the landlord's responsibility – was placed on the tenants.

While the tenants were certainly acting in their best interests in finding a new tenant, they were, in fact, not legally obligated to do so. I find it unreasonable of the landlord to place the obligation of finding a new tenant on the tenants but then pursue them for compensation when they were unable to secure a new tenant for January 2020. Transferring full responsibility of his duty to mitigate his losses onto the tenants is not, I conclude, a reasonable action in mitigating a potential loss. More so, aggravating the mitigation by "turning down and ignoring other tenants" runs counter to a reasonable effort to mitigate loss.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that he did whatever was reasonable to minimize his losses. Indeed, he did nothing to minimize the loss of rent. For this reason, I must dismiss the landlord's claim for compensation without leave to reapply.

Further, as the landlord was unsuccessful in his application, I dismiss the claim for recovery of the application filing fee without leave to reapply.

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 19, 2020

Residential Tenancy Branch