



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELK VALLEY FAMILY
SOCIETY and [tenant name sup to protect privacy]

DECISION

Dispute Codes MNRL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background, Evidence

The landlord's agent gave the following testimony. The one-year fixed term tenancy began on July 1, 2020 but ended early on May 20, 2021. The monthly rent of \$1250.00 was due on the first of each month. The tenant had financial assistance from a homelessness society that paid the landlord \$450.00 per month and the remaining \$800.00 was the responsibility of the tenant. The landlord currently holds a \$625.00 security deposit. The agent testified that on May 19, 2021 the tenant advised her that she would be moving out the following day. The agent testified that the tenant did not give reasons as to why she was moving out. The agent testified that the landlord did not rent the unit for the month of June and seeks the tenants' portion of the rent as loss of revenue in the amount of \$800.00.

The tenant testified that she ended the tenancy early as she was fleeing domestic violence. The tenant testified that in late March 2021, she became aware that her former partner had found out where she was living. The tenant testified that he had once attempted to kidnap her child. The tenant testified that she first verbally advised the agent on April 12, 2021 that she might be moving and that she also advised the agent's assistant. The tenant testified that she verbally told the landlord several times that she would be moving. The tenant submits that this is a "cash grab" by the agent.

Analysis

Section 45 of the *Act* provides extensive information in regard to ending a tenancy due to family violence.

Tenant's notice: family violence or long-term care

45.1 (1) In this section and section 45.2:

"family member" has the same meaning as in the *Family Law Act*;

"family violence" has the same meaning as in the *Family Law Act*;

"household violence" means violence, with or without an intent to harm a tenant or occupant, that has adversely affected a tenant's or occupant's quiet enjoyment, security, safety or physical well-being or is likely to adversely affect those if the tenant or occupant remains in a rental unit, including

- (a) physical abuse of the tenant or occupant, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of the tenant or occupant,
- (c) attempts to physically or sexually abuse the tenant or occupant,
- (d) psychological or emotional abuse of the tenant or occupant, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, the financial or personal autonomy of the tenant or occupant,
 - (iii) stalking or following the tenant or occupant, and
 - (iv) intentional damage to property, and
- (e) in the case of an individual under the age of 19, direct or indirect exposure to violence against the tenant or occupant;

"long-term care" means personal or health care provided in a long-term care facility to a person who is unlikely to return to living independently under a tenancy agreement;

"long-term care facility" means any of the following:

- (a) a community care facility under the *Community Care and Assisted Living Act*;
- (b) a facility that, under the *Continuing Care Act*, provides a program of continuing care in the form of residential care;
- (c) a hospital within the meaning of
 - (i) paragraph (c) of the definition of "hospital" in section 1 of the *Hospital Act*, or
 - (ii) section 5 of that Act;

"occupant" means an individual, other than a tenant, who occupies a rental unit.

(2)A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming one of the following:

- (a)if the tenant remains in the rental unit, the safety or security of
 - (i)either the tenant or a dependant of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant, or
 - (ii)either the tenant or occupant is or is likely at risk from household violence;
- (b)the tenant has been assessed as requiring long-term care;
- (c)the tenant has been admitted to a long-term care facility.

(3)A tenant under this section 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, 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*].

(5)For certainty, a reference in this section or section 45.2 to "occupant" includes a dependant of a tenant or occupant, if the dependant occupies the rental unit.

Confirmation of eligibility

45.2 (1)A person may make a statement confirming a tenant's eligibility to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*] only if the person

- (a)is authorized to do so under the regulations, and
- (b)has assessed, in accordance with the regulations, the tenant and the tenant's circumstances and, if applicable in respect of household violence, the occupant and the occupant's circumstances.

(2)A person who makes a statement under this section must

- (a)make the statement in the approved form, and

(b)keep records as required by the regulations.

(3)In a proceeding under this Act, a person who makes a statement under this section is compellable to disclose or provide evidence respecting the following types of information only:

(a)evidence respecting the person's authority, for the purposes of subsection (1) (a), to make the statement;

(b)evidence respecting the veracity of the signature appearing on the statement.

The tenant did not provide any documentation for this hearing. The tenant testified that her former partner did not contact her at this location or attend the premises. The tenant did not provide sufficient information to the agent to advise that the reason she was seeking to end the tenancy was due to domestic violence as required and noted above. Also, the tenant took almost two full months to decide to move out and during that entire time, the agents and tenant's correspondence did not mention an early termination of the lease but only referred to an end of tenancy date of June 30, 2021.

Although the tenant testified that she has all the necessary documentation to support her position, she did not submit any of it for this hearing. The tenant did not provide sufficient evidence of the violence and the accompanying confirmation of eligibility as required. Based on the above and the tenant's own testimony confirming that she only gave one day's written notice to end the tenancy, I find that the landlord is entitled to the loss of revenue for June 2021. The landlord is entitled to \$800.00.

Conclusion

The landlord has established a claim for \$800.00. I order that the landlord retain the \$625.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$125.00. This order may be filed in the Small Claims Court and 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: December 02, 2021

Residential Tenancy Branch