



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S
 MNSD, FFT

Introduction

This hearing convened as a result of Cross Applications. In the Landlord's Application for Dispute Resolution, filed on June 16, 2021, the Landlord requested monetary compensation from the Tenants for unpaid rent, authority to retain their security deposit, and to recover the filing fee. The Tenants filed two Applications for Dispute Resolution, both on July 26, 2021, in these applications the Tenants requested return of their security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 13, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent?
2. What should happen with the Tenants' security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The tenancy began June 1, 2020. Monthly rent was \$2,100.00 and the Tenants paid a \$1,050.00 security deposit which the Landlord continues to hold.

The Landlord testified that the Tenants gave notice to end their tenancy on May 11, 2021 and indicated they wished to end their tenancy 20 days later on May 31, 2021. The Landlord confirmed that she tried to rent the unit for June 1, 2021, however it was not rented until July 1, 2021 such that she sought monetary compensation for loss of rent for June 2021.

In terms of her attempts to re-rent the unit, the Landlord stated that she placed an ad indicating the rental unit was available for June or July 1, 2021. The Landlord confirmed that there was a lot of response to her ads and that she informed the Tenants accordingly. She further stated that based on the time needed to go through the applications, she was not able to get anyone suitable for June 1, 2021 but did rent the unit to someone for July 1, 2021.

In reply to the Landlord's claim, the Tenant V.G. testified as follows. He confirmed that, due to a death in their family, they gave notice to end their tenancy on May 11, 2021 for an end date of May 31, 2021. He acknowledged this was less than the required 30 days. He stated that it was the Tenants' position that the Landlord did not make adequate effort to re-rent the unit for June 1, 2021 and therefore did not mitigate her losses. In support the Tenants provided copies of ads placed by the Landlord online; one indicated the unit was available for June *or* July 1, 2021 and the other only referenced July 1, 2021. He submitted that had she wanted to re-rent for June she should not have given July as an option.

V.G. further stated that when they did the move out inspection on May 31, 2021 the Landlord informed the Tenants that she was overwhelmed with all the responses that she got from the ad. The Tenant stated that while they were living in the rental unit there were a lot of viewings such that they believe she could have rented it earlier than July 2021.

V.G. confirmed that they provided the Landlord with their forwarding address on June 20, 2021.

Analysis

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

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.
- (2) A tenant 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (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.
- (3) 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.
- (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, and
- (e) when given by a landlord, be in the approved form.

The undisputed evidence before me is that the Tenants gave notice to end their tenancy on May 11, 2021. Pursuant to section 45(1) the effective date of their notice is June 30, 2021. I accept the Tenants' submissions that they suffered a loss of a family member at the time they gave notice to end their tenancy; while this is most unfortunate and explains their late notice, it does not change the effective date of the notice pursuant to section 45.

I accept the Landlord's testimony that she attempted to re-rent the unit as of June 1, 2021. Evidence supplied by the Tenants confirms she advertised the unit as being available for a June or July start date. While she could have only advertised for June, with only a few weeks left in May when she received the Tenants' notice, I find her choice to advertise for both months was a reasonable course of action. I am satisfied the Landlord mitigated her losses by attempting to re-rent the unit as soon as possible.

I therefore find the Landlord is entitled to monetary compensation for unpaid rent for June 2021 and I award her the sum of **\$2,100.00**. Pursuant to section 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants \$1,050.00 security deposit towards the amount awarded and I grant the Landlord a monetary order for the balance due in the amount of **\$1,050.00**.

As I have awarded the Tenants' security deposit to the Landlord their applications are dismissed, including their request to recover the filing fee.

Conclusion

The Landlord's request for compensation from the Tenants for unpaid rent for June 2021 is granted. The Landlord may retain the Tenants' security deposit and is granted a monetary order for the balance due.

The Tenants' applications are 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: January 19, 2022

Residential Tenancy Branch