



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

TN ('landlord') appeared and testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence package. In accordance with sections 88 and 89 of the *Act*, I find the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on December 1, 2020, and was to end on November 30, 2021. Monthly rent was set at \$2,950.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,475.00, which the landlord still holds.

Both parties confirmed that the tenancy ended on August 31, 2021 after the tenant gave notice that they would be ending the tenancy on that date. The tenant testified that they were of the understanding that they were able to terminate the tenancy effective August 31, 2021 after discussions back and forth between the parties about the tenancy. The tenant testified in the hearing that these discussions took place through email and text message. The tenant testified that they were not aware that the landlord would be filing an application for dispute resolution, or would be seeking a monetary order for losses until they received the notice of dispute. The tenant testified that they had attempted to give the landlord as much notice as possible, and tried to assist the landlord with filling the vacancy as soon as possible.

The landlord testified that they did agree to allow the tenant to move out as of August 31, 2021, but that the tenant was still expected to reimburse the landlord for losses if they were unable to fill the vacancy for the rest of the term. The landlord testified that despite their efforts, they suffered a loss of one month's rent due to the early termination of the fixed term tenancy.

Analysis

Section 44 of the *Residential Tenancy Act* reads as follows:

- 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.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (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.

The *Act* is specific about how a tenancy may end. While the tenant did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. No written mutual agreements were submitted in evidence to support that this tenancy had ended by way of mutual agreement, and no orders were obtained from an Arbitrator allowing the early end of this tenancy.

The tenant moved out three months earlier than the date specified in the tenancy agreement contrary to sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to a monetary order for losses.

Based on the evidence and testimony before me, I am satisfied that both parties had made significant efforts to minimize the landlord's losses by filling the vacancy as soon as possible. Despite these efforts, the landlord was unable to find a suitable tenant to move in earlier than October 1, 2021. I am satisfied that the landlord had sufficiently supported that they suffered a monetary loss of rent for September 2021 due to the early termination of the fixed term tenancy. Accordingly, I allow the landlord's application for recovery of this loss, and the landlord is granted a monetary order for \$2,950.00.

The landlord continues to hold the tenant's security deposit of \$1,475.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the deposit in partial satisfaction of the monetary award.

Conclusion

I allow the landlord's monetary claim for loss of rental income in the amount of \$2,950.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. The landlord is provided a monetary order for the remaining balance of \$1,475.00.

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 28, 2022

Residential Tenancy Branch