



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 3, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation relating to loss of rent.

The Landlord's Agent A.D. and the Tenant B.B. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence package. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that he did not submit any documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for loss of rent, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the fixed term tenancy began on July 15, 2021 and was meant to continue until June 30, 2022. During the tenancy, the Tenants were required to pay rent in the amount of \$3,500.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,750.00 and a pet damage deposit in the amount of \$500.00, both of which have since been returned to the Tenants, less the agreed upon deductions. The tenancy ended early on March 31, 2022.

The Landlord's Agent stated that she received the Tenants' notice to end tenancy on February 4, 2022 with an effective move out date of March 31, 2022. The Landlord's Agent stated that she placed several advertisements and conducted regular showings in an attempt to re-rent the rental unit for April 1, 2022. The Landlord's Agent stated that the Landlord wished to increase the rent to \$3,800.00 rather than the \$3,500.00 that the Tenants had been paying. The Landlord's Agent stated that after some time of, she became flexible with the rental amount and found a new occupant to re-rent the rental unit as of May 1, 2022 at a monthly rent of \$3,650.00.

The Landlord's Agent stated that he Landlord suffered a loss of rent in the amount of \$3,500.00 for the month of April 2022 as a result of the Tenants ending their fixed term tenancy early. As such, the Landlord is seeking to recover this loss.

The Tenant responded by stating that the Landlord should not have had difficulties re-renting the rental unit as it there is a high demand for rental units. The Tenant stated that the Landlord was given ample notice of their intent to vacate the rental unit. The Tenant stated that they moved out of the rental unit on March 15, 2022 which gave the Landlord two weeks to show the empty unit which was left clean and undamaged. The Tenant stated that the Landlord lost potential renters when they increased the advertised monthly rent amount to \$3,800.00. The Tenant stated that had they left the rent amount at \$3,500.00 they would have had a better chance at re-renting the rental unit for April 1, 2022 and would not have suffered a loss.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, 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 Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, I find that the Tenants were not entitled to end the fixed term tenancy early and have therefore breached the *Act* and the tenancy agreement.

I accept that the Landlord's Agent made efforts to re-rent the rental unit by placing advertisements and conducting regular showings. However, I find that the Landlord, by raising the amount of monthly rent from \$3,500.00 to a higher amount of \$3,800.00, failed to mitigate their loss. This is further demonstrated by the fact the Landlord was required to reduce the amount of rent sought to \$3,650.00 to secure a new occupant for May 1, 2022.

As I have found that the Landlord failed to mitigate their loss by increasing the amount of rent when attempting to re-rent the rental unit, I find that the Landlord is not entitled to compensation for loss of rent for April 2022. I therefore dismiss the Landlord's Application without leave to reapply.

Conclusion

As the Landlord failed to mitigate their loss, the Landlord is not entitled to compensation and their Application is subsequently 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 12, 2023

Residential Tenancy Branch