



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for ten minutes from the scheduled starting time of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that he served the tenant by sending the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 19, 2019 to the tenant's former address. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. I find that this method of service is not compliant with section 89 of the *Act* because the tenant did not reside at that mailing address at the time the package was sent.

However, the landlord testified that the notice package he sent by mail was forwarded to the tenant by Canada Post and the tenant actually received it. The landlord produced a Canada Post mailing confirmation record which showed that the tenant received the notice of hearing package on March 26, 2019. In addition, the document showed that the document was signed for by the tenant and the signature on the form appears to match the tenant's signature on the tenancy agreement.

I find that the tenant actually received the notice package on March 26, 2019. Accordingly, I find the tenant sufficiently served the landlord in accordance with Section 71(2)(b) of the *Act* on March 26, 2019.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to authorization to recover his filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on May 22, 2018. The landlord testified that the monthly rent was \$1,664.00, payable on the first day of each month. The landlord testified that the tenant paid a \$500.00 security deposit.

The landlord testified that he discovered that the tenant had ended the tenancy agreement when he received a text message from the tenant on October 26, 2018 wherein the tenant advised him that she had already vacated the rental unit. The landlord testified that the tenant did not pay any rent for October 2018.

The landlord testified that he met a potential renter at the rental unit the following day. However, the landlord testified that this prospective tenant rejected the rental unit because it was dirty and in poor condition. The landlord testified that the property was dirty, smelled badly and there was damage to the carpet, walls, doors and cabinets.

The landlord testified that he decided to repair the rental unit before he attempted to rent the property out again. The landlord testified that, as of the date of the hearing, he has still not finished the repairs and he has still not attempted to rent the property out again.

The landlord claimed unpaid rent of \$9,984.00 for loss of rent from November 2018 to April 2019. The landlord claimed \$1,574.23 in ferry costs to travel from his home to the rental property to make the repairs himself.

Analysis

I find that the tenant has not paid rent for October 2018. Pursuant to section 71(1) of the *Act* which states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." I find the landlord is entitled to a monetary award of \$1,664.00 for unpaid rent in October 2018.

The landlord also seeks compensation for the loss of rent resulting from the tenant's early termination of the tenancy agreement. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

I find that the tenant notified the landlord on October 26, 2018 that she had ended the tenancy even though the parties had a fixed term tenancy with a stated end date of April 30, 2019. Section 45(2) of the *Act* states that a tenant cannot end a fixed tenancy before the stated end date of the tenancy agreement. Accordingly, I find that the tenant breached the tenancy agreement by ending the tenancy early. Furthermore, I am satisfied that landlord has suffered a loss of rent from the tenant's breach of the tenancy agreement by having the rental unit vacant through April 30, 2019.

However, I am not satisfied that the landlord has provided sufficient evidence to establish that he has taken reasonable measures to mitigate his loss. The landlord attempted to rent the property to one individual but the landlord did not make any further efforts to rent the property to another tenant. I find that this is not adequate mitigation of his loss.

While the landlord did argue that he needed to make repairs to the property to make it habitable, I find that the landlord's failure to complete the repairs within a reasonable time is not a reasonable mitigation of his loss. I find that a reasonable time to make the repairs to the property would be one-half of a month. Accordingly, I grant the landlord compensation in for loss of rent for breach of the fixed term tenancy in the amount of one-half of a month of rent, being \$832.00 (1/2 of \$1,664.00).

The landlord has also requested compensation for his ferry transportation costs to travel to the rental unit to make repairs and find a new tenant. However, I find that the transportation costs of the landlord to travel to the rental unit are not caused by acts or omissions of the tenant. Section 32 of the *Act* requires landlords to maintain rental units. It is expected that the landlords will make periodic trips to rental units to maintain their rental units pursuant to the *Act*. It is the landlord's choice to operate a rental unit at a location far from the landlord's home and I find that the landlord is accordingly solely responsible for his own travel costs to maintain the property in compliance with the *Act*.

Based on the undisputed testimony of the landlord, I find that the landlord holds a security deposit of \$500.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$2,096.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
October 2018 rent unpaid	\$1,664.00
Damages for breach of fixed term tenancy	\$832.00
Less security deposit	(-\$500.00)
Filing fee	\$100.00
Total	\$2,096.00

Conclusion

I grant the landlord a monetary order in the amount of **\$2,096.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: July 10, 2019

Residential Tenancy Branch