



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDL, FFL

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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave undisputed sworn testimony supported by written evidence that they sent the tenant a copy of their dispute resolution hearing and written evidence packages by registered mail on March 31, 2019. They provided the Residential Tenancy Branch (the RTB) with a copy of the Canada Post Tracking Number and Customer Receipt, as well as the tenant's forwarding address provided to the landlord by the tenant in February 2019. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with this material on April 5, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence a copy of a four month fixed term Residential Tenancy Agreement (the Agreement) signed by the parties on July 29 and 30, 2018, According to the terms of this Agreement, this tenancy for a furnished rental suite was to run from September 1, 2018 until December 30, 2018. Monthly rent was set at \$2,000.00, payable on the first of each month, plus hydro. Although the tenant paid a \$1,000.00 security deposit on September 1, 2018, that deposit has been returned to the tenant by the landlord.

The landlord's application for a monetary award of \$6,054.27 included the following items listed on the landlord's Monetary Order Worksheet entered into written evidence by the landlord:

| Item | Amount |
|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Unpaid Rent (October to December 2018 (3 months @ \$2,000.00 - \$1,700.00 recovered from new tenant for December 2018 = \$4,300.00) | \$4,300.00 |
| Duvet Cover | 123.20 |
| Cleanup of Rental Suite | 280.00 |
| Damage to Rental Suite | 703.50 |
| Unpaid Hydro Bill | 91.37 |
| Postage | 21.11 |
| Filing Fee (2 filing fees @ \$100.00 = \$200.00) | 200.00 |
| Photos | 10.09 |
| Night Table | 80.00 |
| Cushion | 50.00 |
| Bedroom Lamp Cord | 150.00 |
| Sweeper | 45.00 |
| Total Monetary Order Requested | \$6,054.27 |

In support of this claim, the landlord entered into written evidence photographic and written evidence, including copies of receipts, invoices, estimates and supporting documents.

The landlord gave sworn testimony supported by written evidence that the tenant ended this tenancy by sending a text message in late September 2018 that they intended to vacate the rental unit by October 1, 2018. Although the landlord conducted a joint move-in condition inspection for this tenancy, the landlord said that the tenant failed to attend the scheduled joint move-out condition inspection when possession of the rental unit was transferred to the landlord on October 1, 2018.

The landlord provided undisputed written evidence and sworn testimony that they commenced attempting to re-rent this suite on October 10, 2018 on a popular rental website. After placing additional advertisements on this website on October 20 and 25, and November 3, 2018, the landlord was able to secure a new tenant as of December 1, 2018. However, instead of the \$2,000.00 in monthly rent the tenant had been paying, the new tenancy was for \$1,700.00 in monthly rent. The landlord applied for the difference between the three months of unpaid rent resulting from the tenant's ending of this fixed term tenancy and the \$1,700.00, the landlord received from the new tenant for December 2018. This resulted in the landlord's claim for a monetary award of \$4,300.00 in lost rent for the final three months of this fixed term tenancy.

The landlord also applied for the recovery of \$91.37 in hydro bills left outstanding when this tenancy ended.

The landlord provided photographic evidence and some receipts to support the claim for damaged parts of the furnishings of this rental unit provided by the landlord. Of these items, the landlord testified that the duvet cover, the night table and the cushion have not yet been replaced by the landlord. The remainder of the items identified in the landlord's claim have either been replaced or repaired.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the December 31, 2018 date specified in that Agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for October, November and December 2018, the last months of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for October, November and December 2018. Eventually, the landlord was successful in mitigating the tenant's exposure to the landlord's loss of rent for part of December 2018, as the new tenant paid the landlord \$1,700.00 for December 2018, instead of the \$2,000.00, the landlord would have received from the tenant had this tenancy continued in accordance with their Agreement. As such, I am satisfied that the landlord has discharged their duty under section 7(2) of the *Act* to minimize the tenant's loss. For these reasons, I allow the landlord's application for a monetary award of \$4,300.00 in loss of rent for the months of October, November and December 2018.

The landlord has not replaced the duvet cover, the night table or the cushion. There is no evidence that the landlord has demonstrated an actual loss resulting from these damaged items. I dismiss the landlord's application for a monetary award for these items, which have not been replaced over nine months after this tenancy ended.

Based on the landlord's joint move-in condition inspection report, the photographs of the condition of the rental unit at the end of this tenancy and the landlord's receipts, I allow the landlord's application for a monetary award of \$280.00 for cleaning required at the end of this tenancy.

I also allow the landlord's application for \$703.50 in damage that needed to be repaired at the end of this tenancy. Much of this damage appears to have arisen as a result of an unauthorized dog or dogs being allowed to reside with the tenant in this rental suite. The receipts provided by the landlord and the photographs clearly show a need to repair the rental unit at the end of this tenancy.

I also allow the landlord's application for replacement of the bedroom lamp cord (\$150.00) and the sweeper (\$45.00) as I am satisfied that both of these items were damaged and have been replaced by the landlord.

I dismiss the landlord's application for the recovery of postage costs and the cost of printing photographs as these are hearing related costs, which are not recoverable from the Respondent in a dispute resolution application.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee for the current application. As explained to the landlord at this hearing, the \$100.00 filing fee for a previous application submitted by the landlord is not recoverable in the context of the current application.

Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy plus the filing fee for this application:

| Item | Amount |
|----------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Unpaid Rent (October to December 2018 (3 months @ \$2,000.00 - \$1,700.00 recovered from new tenant for December 2018 = \$4,300.00) | \$4,300.00 |
| Cleanup of Rental Suite | 280.00 |
| Damage to Rental Suite | 703.50 |
| Unpaid Hydro Bill | 91.37 |

| | |
|-----------------------------|-------------------|
| Filing Fee | 100.00 |
| Bedroom Lamp Cord | 150.00 |
| Sweeper | 45.00 |
| Total Monetary Order | \$5,669.87 |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 09, 2019

Residential Tenancy Branch