



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

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

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

Counsel for the landlord submitted the following on behalf of the landlord. The tenancy began on October 1, 2018 and ended on April 30, 2020. The parties signed a new agreement to commence on May 1, 2020 with the monthly rent of \$13,000.00 due on the first of each month. The tenant paid a security deposit of \$6500.00 which the

landlord still holds. Counsel submits that the tenant did not pay the rent in full for the month of May 2020. Counsel submits that on May 15, 2020 the tenant emailed the landlord advising that they would be moving out on June 1, 2020. Counsel submits that the tenant not only gave short notice to move out but in the incorrect form. Counsel submits that the tenant is responsible for the June rent. Counsel submits that the tenant did not clean the carpets at move out and caused some damage to the walls and ceiling. Counsel submits that there are also strata fines against the tenant for noise. Counsel submits that the landlord has provided extensive documentation to support their claim.

The landlord is applying for the following:

1.	Unpaid Rent May 2020	\$5000.00
2.	Carpet Cleaning	132.72
3.	Strata Fines	400.00
4.	CRI Group repairs and painting	1006.72
5.	Cloverdale Paint	45.61
6.	Unpaid Rent June	13000.00
7.	Filing Fee	100.00
8.		
9.		
10.		
	Total	\$19685.05

The tenant gave the following testimony. The tenant advised that he takes responsibility for claims 1-3 as noted in the table above. The tenant also accepts \$330.00 worth of claim #4 as he is willing to pay for the holes for mounting the television on the wall. The tenant disputes the ceiling holes as they were there at move in. The tenant further disputes the unpaid rent for June 2020. The tenant testified that he had paid well over market value for that unit for 18 months before signing a new agreement at a reduced rate for May 1, 2020. The tenant testified that due to COVID – 19 his business was greatly impacted. The tenant testified that he was working with the landlord and felt that they had an agreement to allow the short notice to help lessen the impact to both parties.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Claims 1-3 as listed on the above table(May Rent, Carpet Cleaning & Strata fines)
\$5532.72

As the tenant accepts responsibility for the above claims, the landlord is entitled to \$5532.72.

Claim 4&5 Damages \$1052.33

The landlord provided the move in and move out condition inspection report to support their claim. The tenant had an agent participate at the move out inspection on his behalf and "signed off" on the damages as noted, accordingly; I find that the landlord is entitled to \$1052.33.

Claim 6 Unpaid June 2020 Rent - \$13000.00

Section 45 of the Act addresses the issue before me 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.

(4)A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In the tenant's own testimony, he acknowledged that he did not provide proper and full notice to the landlord. In addition, the short notice and the condition of the unit made it

difficult for the landlord to re-rent the unit. The landlord testified that they were unable to re-rent the unit until July 15, 2020. Based on the above, I find that the landlord is entitled to \$13000.00.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$19,685.05. I order that the landlord retain the \$6500.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$13,185.05. This order may be filed in the Small Claims 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: October 16, 2020

Residential Tenancy Branch