



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kokanee Fishing Co. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended legal counsel and two agents for the landlord.

Legal counsel testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 29, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of legal counsel, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; lost revenue; and utilities; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on June 11, 2014 for a 1 year and 1 day fixed term tenancy beginning on June 7, 2014 for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid. The landlord submitted the tenant rented the rental unit to house their staff.

The landlord submits that in January 2015 the tenant gave the landlord a 1 month notice to end the tenancy, paid January 2015 rent and then did not pay any further rent for the duration of the fixed term.

The landlord stated that they were able to re-rent the rental unit as of May 1, 2015 at a reduced rent of \$700.00. As a result the landlord seeks compensation for the lost revenue for the period until the end of the fixed term, in the amount of \$1,600.00.

The landlord described the condition of the rental unit as including the fridge; kitchen and bathroom sink; the toilet; the bathtub all filled with rotting fish and fish guts. The countertops were filthy; the carpets reeked; and the walls were blistering. The landlord submitted that the tenants had left behind boots; clothing; and a substantial amount of garbage.

The landlord's claim is broken down as follows:

Description	Amount
Rentals – floor removal equipment	\$83.45
Cleaning supplies; toilet seat; table fan; locks (interior and exterior)	\$236.49
Flooring	\$1,281.76
Landfill and fridge recycling fees	\$41.85
Curtains and rods	\$101.58
Paint and supplies	\$527.80
Ozone generator rental	\$200.00
Plumbing	\$91.72
Electrical – light fixture/fan/baseboard heaters	\$330.05
Labour	\$4,972.00
GST	\$167.50
Total	\$8,034.20

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Based on the undisputed submissions of the landlord I find there is no evidence before me that would indicate that the tenant had determined that the landlord has breached a material term of the tenancy agreement. As such, I find the earliest the tenants could have ended the tenancy, pursuant to Section 45(2), was June 7, 2015.

As a result, I find the tenant was responsible for the payment of rent for the months of February, March, April, May, and the first 7 days of June 2015 for a total of \$3,175.00 less the amount the landlord received for the same period from their new tenants of \$700.00 for the month of May, 2015 and \$163.33 for the first 7 days in June, 2015. I find the total amount the landlord is entitled to for lost revenue was \$2,311.67

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept, from the landlord's undisputed verbal testimony that the rental unit was left in the condition as described and required the cleaning and repairs claimed. I also accept that the landlord's made a calculation error in totalling this portion of their claim. I grant the landlord's full claim in the amount identified in the chart above or \$8,034.20.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$10,445.87** comprised of \$2,311.67 lost revenue; \$8,034.20 cleaning and repairs; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$10,070.87**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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: September 16, 2016

Residential Tenancy Branch