



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR MNDC MNSD

Introduction

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

- a monetary order for unpaid rent, 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;
- a monetary order 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, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. KL and MR ('tenant') appeared as agents for the tenant, and had full authority to do so.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain a portion or all of the security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 14, 2014, with monthly rent set at \$895.00. The landlord still holds a \$450.00 security deposit. The tenant is an organization which provides support to adults with disabilities, and sublets the rental unit to their clients. The tenancy ended with this organization on March 31, 2015.

The landlord obtained new tenants for the suite commencing April 1, 2015, and realized that the previous tenants had not properly vacated the suite. The unit was sublet to a tenant who had in turn sublet to another tenant. The landlord testified that the keys were not returned to them, and the new tenants were not able to move in until May 1, 2015 due to the belongings that were left behind and were too difficult to move (e.g., a heavy drill). The bathroom required repairs, which were not completed until September 2015. The landlord included in evidence a letter from the new tenants confirming that they were not able to move into the suite on April 1, 2015, as planned, and was further compensated the May 2015 rent by the landlord as the unit was still not ready for occupancy due to the damage and mess left by the previous tenants.

KL testified that their client had sublet to a woman who they were unaware of, and admitted that her behaviour was “dodgy”. She testified that the woman was given notice as soon as they had discovered this unauthorized sublet, and did not dispute the fact that she had caused damage to the suite. The organization offered to compensate the landlord \$1,688.51 upon receipt of the receipts from the landlord. The KL testified that over two years has passed, and they have not received any receipts from the landlord. A copy of this email correspondence was included in the tenant’s evidence, which included the tenant’s forwarding address. The email, dated July 31, 2015, read “We will agree to pay back a portion of the amount you have requested. A damage deposit in the amount of \$450.00 was provided to you and should be used towards the amount owing...Upon receiving copies of the receipts, we will reimburse”. KL testified that the new tenants had moved in quickly on April 1, 2015 and no move in or move out inspections were completed. KL noted that the landlord did not file for dispute resolution until March 2017, almost two years after this tenancy had ended.

The landlord disputes the fact that no inspections or reports were completed, stating that the original move-in report from November 2014 was in the possession of the tenant, and no copy was ever made for the landlord. The landlord testified that she had sent the receipts to the organization, but had never received a reply. She stated that she had attempted many phone calls, including in August 2016, but was told the accountant was away. She sent another package in December 2016 by registered mail, and received confirmation the package was received.

In January 2017, the landlord received a text that the agent would speak to the director of the organization and get back to her. In January 31, 2017, she was told that the amount was higher than expected, and a follow-up email from KL, dated February 23, 2017, stated that she would only receive the amount agreed to in the original email. She testified that the organization was not a responsible tenant, and had never checked up on their clients.

The landlord provided the following list of damages for her monetary claim:

Item	Amount
2 Months Rent	\$1,790.00
Cleaning Supplies	36.46
Painting Supplies	382.54
Chandelier and Gloves	62.55
Kitchen Backsplash	80.28
Curtains	201.58
Bathroom	838.99
Carpet	636.78
Blinds	140.89
Closet Doors & Hardware	296.62
1.5% interest	67.26
Security Deposit	-450.00
Total Monetary Order Requested	\$4,083.95

The landlord provided in evidence copies of receipts and invoices in support of her monetary claim above.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the tenant gave their written authorization to the landlord to keep the \$450.00 security deposit to be applied against any balance owing. Accordingly I find that the landlord is entitled to keep the tenant's security deposit of \$450.00 in satisfaction of the monetary claim owed to the landlord, and in accordance with the offsetting provisions of section 72 of the *Act*.

The tenant did not dispute that damage had occurred as part of this tenancy, and agreed to compensate the landlord's loss in the amount of \$1,688.51. Accordingly, I find that the landlord is entitled to \$1,688.51 in compensation for the damage that had occurred as part of this tenancy. The landlord made an additional monetary claim exceeding this agreed upon amount, which included compensation for 2 month's rent, and the cost of new carpet and a new bathroom vanity and sink.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

The evidence of the landlord is that they had obtained new tenants, whose move-in was delayed by one month due to the undisputed fact that the previous tenants had left their belongings behind. As the previous tenants failed to properly vacate the unit, the landlord compensated the May 2015 rent for the new tenants. The landlord submitted a monetary claim of \$1,790.00 for the loss of two months' rent due to the tenant's failure to properly vacate the suite. I am satisfied that the landlord had made some efforts to mitigate the tenant's exposure to the landlord's monetary loss by re-renting the suite as soon as possible, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$1,790.00 for the two months of lost rental income due to tenant's failure to properly vacate the suite.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord testified that a move-in inspection was completed, although neither party produced a copy of the report for the purposes of this hearing. The landlord testified that the original copy was in the possession of the tenant, which is disputed by the tenant. The landlord did not provide sufficient evidence to support this claim, in the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy beyond what was agreed to by the tenant. I find that the landlord did not provide sufficient evidence to support the 1.5% interest incurred as part of their monetary claim. Accordingly the landlord's monetary claim exceeding the \$1,688.51 agreed to, plus the compensation of two months' rent, is dismissed.

I find the landlord is entitled to recover the cost of the filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$3,128.51 in the landlord's favour under the following terms which allows for the agreed upon monetary award for damage caused by the tenant, as well as compensation for the loss of rental income the landlord suffered. I allow the landlord to

retain the \$450.00 security deposit in satisfaction of their monetary claim. The landlord is also authorized to recover \$100.00 for the filing fee.

Item	Amount
Loss of Rental Income (2 months x \$895.00)	\$1,790.00
Compensation for damage, as consented to by the tenant	1,688.51
Recovery of Filing Fee	100.00
Security Deposit	-450.00
Total Monetary Order	\$3,128.51

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 21, 2017

Residential Tenancy Branch