



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPR

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was represented at the hearing by agent, K.C., (the "landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on January 21, 2017. Tracking numbers for each package were provided at the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with these documents on January 26, 2017.

At the outset of the hearing the landlord stated that she wished to amend her application for a Monetary Order from \$6,943.76 to \$6,422.76 in reflection of a new occupant being found for the rental property. As the tenants would not be unjustly prejudiced, I amend the landlord's application for a Monetary Order pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Can the landlord retain the security deposit from the tenants?

Is the landlord entitled to a Monetary Order for loss suffered as a result of the tenancy?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from October 1, 2016 to June 30, 2017. Rent was \$1,543.50 per month and a security deposit of \$750.00 continues to be held by the landlord.

The landlord explained that she was seeking a Monetary Order of \$6,422.76 in satisfaction for the tenants having broken their fixed term tenancy agreement, as well as for compensation for damage to the unit. The landlord testified that the tenants were issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on December 8, 2016. On approximately December 18, 2016 the effective date of the 10 Day Notice, the tenants vacated the rental unit. No rent was paid for December 2016. The landlord stated that the tenants left the property without providing a forwarding address. It was only after the landlord contacted the one of the mother of one of the tenants in January 2017 that she was able to locate their forwarding address.

On March 17, 2017 the landlord was able to re-rent the apartment to a new tenant. The landlord said that the Monetary Order she sought was in reflection of unpaid rent and utilities for December 2016, along with unpaid rent for January, February and half of March 2017. In addition, the landlord stated that she incurred a number of expenses related to this tenancy including cleaning, rubbish removal and carpet cleaning. The landlord also sought liquidated damages of \$625.00 as per section 5 of the tenancy agreement entered into between the parties. A copy of the residential tenancy agreement signed by the parties was provided to the hearing and demonstrated that the tenants had signed a fixed-term tenancy agreement with the landlord that was set to run from October 1, 2016 to June 30, 2017.

Specifically, the landlord requested a monetary award as follows:

Item	Amount
Rent & Utilities owing	\$5,161.66
Liquidated Damages	625.00
Cleaning Services	240.00
Rubbish Removal	173.25
Carpet Cleaning	122.85
Filing Fee	100.00
Total =	\$6,422.76

Analysis

The landlord has applied for a Monetary Order of \$6,722.76 to recover the expenses she incurred in removing debris and cleaning the rental unit following the unexpected

departure of the tenants. The landlord is also seeking to retain the security deposit to apply against any monetary award and to recover the filing fee.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord ever received the tenants' forwarding address in writing but rather was able to speak to tenant S.K.'s mother and received it following a conversation with her on, or around January 14, 2017. The landlord provided undisputed oral testimony that she applied dispute resolution on January 20, 2017. As the tenants abandoned the rental unit without notice in mid-December 2016, it is impossible to determine an end of tenancy date. I find that the landlord has applied to retain the security deposit within 15 days of receiving the tenants' forwarding address and may therefore retain the entire amount of the deposit to be put against any future monetary award.

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 her entitlement to a claim for a monetary award.

Through a combination of undisputed oral testimony, photographic evidence, and receipts the landlord has accurately demonstrated the loss she has suffered as a result of this tenancy. I am satisfied that the damage done to the rental unit and the resulting required repairs were due to the tenant's actions. Furthermore, evidence was provided to the hearing showing the actual monetary amount of loss suffered as a result. The landlord explained that this unit required extensive cleaning following the tenants abrupt

departure. The receipts submitted to the hearing accurately documented the cleaning that was required and note the expenses incurred by the landlord. I find the landlord's undisputed testimony and evidentiary package compelling and award the landlord the entire amount of money sought in her Monetary Order for repairs to the rental unit and cleaning services.

In addition to money sought for repairs and damage, the landlord is seeking a monetary award for the unpaid rent in January, February and half of March 2017. She has also applied for liquidated damages as per section 5 of the residential tenancy agreement signed between the parties. The landlord explained, the tenants did not give adequate notice and abandoned the rental property with six and a half months remaining on the fixed-term tenancy agreement.

Section 7 of the *Act* explains, "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... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, notice was provided to the landlord a few days prior to the tenants' abandonment of the property in December 2016. The landlord testified that upon receipt of this notice she inspected the suite and determined that a large number of repairs would be required in the unit before it could be re-rented. The landlord explained that steps were immediately taken to clean and repair the unit, that it was re-listed for rental, and it was ready for occupation in mid-March 2017. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.*

The landlord explained that section 5 of the tenancy agreement signed between the parties provides for the landlord to recover \$625.00 from the tenants to recover costs associated with a broken-fixed term tenancy. The landlord stated that due to the unexpected nature of the move and the damage done to the rental unit, efforts had to be made to find a new occupant and to repair the unit. A copy of the tenancy agreement provided to the hearing confirmed the tenants' written agreement to this clause. As I find that the tenants have violated the tenancy agreement and the landlord had to take

steps to mitigate future loss, the landlord is entitled to the \$625.00, the amount identified in section 5 of the tenancy agreement for liquidated damages.

As the landlord was successful in this application, the landlord may recover the \$100.00 filing fee from the tenants pursuant to section 72(1) of the *Act*.

Conclusion

I issue a Monetary Order of \$5,672.76 in favour of the landlord as follows:

Item	Amount
Rent & Utilities owing	\$5,161.66
Liquidated Damages	625.00
Cleaning Services	240.00
Rubbish Removal	173.25
Carpet Cleaning	122.85
Filing Fee	100.00
Less Security Deposit	(-750.00)
Total =	\$5,672.76

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

The landlord may retain the tenants' security deposit.

The landlord may recover the filing fee from the tenants.

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 17, 2017

Residential Tenancy Branch