



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNDC, MNSD, FF, O

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Preliminary Issue

At the outset both parties confirmed that the tenancy had ended as such, the landlord's request for an order of possession is not required (OPN). No further action is required for this portion of the landlord's claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain the security and pet damage deposits?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 16, 2016 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,200.00 payable on the 1st day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$550.00 were paid. The tenancy ended on December 31, 2016.

The landlord seeks an amended monetary claim of \$3,350.00 which consists of:

\$2,200.00	Loss of Rental Income, January 2017
\$2,200.00	Loss of Rental Income, February 2017
\$400.00	Loss of Rental Income, Difference from new tenant's monthly rent (March – June 2017 @ \$100 per month)

The landlord provided affirmed testimony that the tenant pre-maturely ended the fixed term tenancy. Both parties agreed that the tenant provided written notice to end the tenancy on November 30, 2016 for December 31, 2016 due to personal reasons. The landlord provided undisputed affirmed testimony that upon being notified on November 30, 2016, the landlord immediately began advertising the rental premises approximately 2 hours later. The tenant disputed that the landlord made a genuine effort to re-rent the premises. The landlord clarified that she had posted a series of online ads for the rental premises and that she had taken many calls as well as arranged viewings of the rental. Both parties also confirmed that the tenant also assisted in giving viewings of the rental premises and answering some questions.

The tenant seeks a monetary claim of \$3,320.00 which consists of:

\$1,100.00	Return of Original Security Deposit
\$550.00	Return of Original Pet Damage Deposit
\$1,100.00	Compensation, Sec. 38(6) Fail to Comply
\$550.00	Compensation, Sec. 38(6) Fail to Comply
\$15.00	Cancelled Cheque(s) Surcharges (X3)
\$5.00	Cancelled/Stopped Cheque Fee

During the course of the hearing the landlord provided testimony that due to her misunderstanding of the Residential Tenancy Act regarding the rent cheques, she is not contesting the tenant's claims totalling, \$20.00 for the cancelled/stopped cheques. As such, the tenant has established a claim for recovery of these items.

The tenant seeks the return of her original \$1,100.00 security and \$550.00 pet damage deposits as well compensation for the landlord failing to comply with the Act. Both parties confirmed in their direct testimony that this tenancy ended on December 31, 2016 and that the landlord accepted the tenant's forwarding address in writing via email on January 9, 2017.

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, both parties have confirmed that the tenant pre-maturely ended the fixed term tenancy on December 31, 2016, when the agreed upon fixed term tenancy would end on June 30, 2017. The landlord is seeking the loss of rental income of \$4,800.00 which consists of loss of rent for January and February 2017 at \$2,200.00 per month and \$400.00 for the loss of rent due to the difference in the new tenant's monthly rent for the last 4 months of the fixed term tenancy.

Policy Guideline #5, Duty to Minimize Losses states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this case, the landlord provided undisputed affirmed evidence that upon being notified on November 30, 2016 of the tenant's intent to end the tenancy, the landlord immediately began advertising the rental premises approximately 2 hours later. The tenant has disputed that the landlord made a genuine effort to re-rent the premises, but provided no further details. The landlord clarified during the hearing that she had posted alternating online ads to rent the premises every 2 days as well as later entering into an agreement with a property management company to assist in re-renting the premises. I find that with no further details from the tenant and the undisputed evidence of the landlord that the landlord has made reasonable efforts to re-rent the premises. As such, I find that the landlord has established a claim for the loss of rental income totaling, \$4,800.00.

I also find as the landlord has been successful in her application that she is entitled to recovery of the \$100.00 filing fee.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, a review of the Dispute Resolution Files and the direct testimony of both parties show that the tenancy ended on December 31, 2016. The landlord accepted the tenant's forwarding address in writing via email on January 9, 2017. The landlord had applied for dispute against the security and pet damage deposits on January 17, 2017. As such, I find that the landlord has properly filed an application for dispute against the security and pet damage deposits within the allowed 15 day time frame. The tenant is entitled to recovery of the original \$1,100.00 security and the \$550.00 pet damage deposits. On the tenant's claims for compensation under section 38 (6) of the Act, I find that the tenant is not entitled as the landlord did comply with section 38 (1) of the Act and this portion of the tenant's claim is dismissed.

During the hearing the landlord conceded to the tenant's claims for recovery of \$20.00 for cancelling/stopping cheques(s). As such, the tenant has established a claim for this portion of the application.

The tenant having only been partially successful in her application is only entitled to recovery of \$50.00 of the filing fee.

The landlord has established a total monetary claim of \$4,900.00.

The tenant has established a total monetary claim of \$1,720.00.

In offsetting these claims, I grant the landlord a monetary order for 3,180.00.

Conclusion

The landlord is granted a monetary order for \$3,180.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: July 07, 2017

Residential Tenancy Branch