



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 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 given a full opportunity to be heard, to present sworn testimony and to make submissions.

On January 20, 2017 the landlord placed a copy of a 10 Day Notice to End Tenancy for Unpaid rent or utilities ("10 Day Notice") in the tenant's mailbox. Pursuant to sections 88 & 90 of the *Act* the tenant is deemed to have been served with the 10 Day Notice on January 23, 2017.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenant by Canada Post Registered Mail on March 5, 2017. The Canada Post tracking number was provided at the hearing and as part of the landlord's evidentiary package. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed to have been served with these documents on March 9, 2017.

Issue(s) to be Decided

- Can the landlord recover a Monetary Order for damage to the rental unit and unpaid rent?
- Can the landlord retain the tenant's security deposit?
- Can the landlord recover the filing fee associated with the application?

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 March 31, 2017. Rent was \$1,800.00 per month and two deposits; one of \$895.00 (security) and another of \$875.00 (pet) were collected at the outset of the tenancy and continue to be held by the landlord.

The landlord explained that he was seeking a Monetary Order of \$4,200.00 in satisfaction for the tenant having broken the fixed term tenancy agreement, along with the large amount of damage which rental unit sustained at the hands of the tenant. The landlord testified that the tenant moved out of the rental unit on February 15, 2017. He stated that rent was only partially paid for January 2017 and completely unpaid for February 2017. The landlord noted that he posted the apartment online starting at the end of February 2017 following the tenant's move out, but was unable to re-rent the apartment until May 1, 2017 because of the large number of repairs that were required in the rental unit following the tenancy.

Specifically, the landlord said that the tenant had damaged the walls with smoke from candles, wax covered various window sills, and the entire rental unit needed repainting because of various scuffs and marks on the walls. The landlord explained that the rental unit was painted immediately before the tenant's occupation of the unit. Copies of the receipts associated with the expenses related to the painting were included as part of the landlord's evidentiary package.

On February 16, 2017 the landlord and the tenant performed a condition inspection of the rental unit together. The tenant provided her forwarding address to the landlord, along with authorization to keep \$800.00 of her \$1,800.00 security deposit.

Analysis

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."

The landlord provided undisputed testimony that tenant moved out of the property on February 15, 2017, several months before their fixed-term tenancy was set to expire. He said that immediately upon the tenant's move out in February 2017 he posted a notice

on Craigslist advertising the unit for rent. He explained that due to the large amount of damage and repairs required in the rental unit, he was unable to re-rent it until May 1, 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.*

Section 67 of the *Act* states, if damage or loss results from a party not complying with this *Act*, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenant, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 14 of the tenancy agreement.

The landlord has also applied to retain the security deposit from the tenant. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing. A copy of the condition inspection report completed between the parties at the end of the tenancy demonstrated that the landlord had received the tenant's forwarding address on February 16, 2017. On February 28, 2017 he applied for dispute resolution. The landlord has therefore fulfilled the requirements of section 38 of the *Act*. Subsections 4 of this section states that, "A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount."

I find that the landlord has received the tenant's written permission to retain \$800.00 of the security deposit. Additionally, I find that he has suffered a loss as a result of this tenancy and may therefore retain the entire amount of the pet and security deposits pursuant to section 38 and 72 of the *Act* against the monetary award to which he is entitled.

As the landlord was successful in his application, he may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order of ~~\$5,235.11~~ \$4,435.11 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$1,300.00 500.00
Unpaid Rent for February 2017	1,800.00
Unpaid Rent for March 2017	1,800.00
Unpaid Rent for April 2017	1,800.00
Paint Invoice	267.21
Paint Invoice	37.90
Return of Filing Fee	100.00
Less Security Deposit	(-895.00)
Less Pet Deposit	(-875.00)
Total =	\$5,235.11 \$4,435.11

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with 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: August 3, 2017

Residential Tenancy Branch