



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNDL

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*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing, with the landlord being represented at the hearing by agent B.M. Both parties were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidentiary package and submitted her own evidentiary package to the hearing. I find that the tenant was duly served with the landlord's application, and both parties were in receipt of each other's evidentiary packages.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The tenant explained to the hearing, that this tenancy began on August 1, 2017. Rent was \$1,195.00 per month, and a security deposit of \$600.00 collected at the outset of the tenancy, continues to be held by the landlord. The landlord has applied for a monetary award of \$1,370.00 as follows:

Item	Amount
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Unpaid Rent for November 2017	\$1,195.00
Cleaning in Rental Unit	75.00
Painting in Rental Unit	100.00
Total =	\$1,370.00

The landlord explained to the hearing, that the tenant vacated the rental unit on November 1, 2017 without notice. He said that because of this abrupt departure, he was without rent for November 2017. The tenant acknowledged that she had vacated the rental unit without formal notice, but explained that her health was in jeopardy because of mould issues which were present in the home. She said she had no choice but to vacate the suite, and was in fact instructed by a doctor to do so. Furthermore, the tenant argued that prior to her departure she had informed the landlord by text message of her intention to vacate the suite.

In addition to a claim for lost rent for the month of November 2017, the landlord is seeking \$175.00 for cleaning and light touch ups to the walls of the rental unit. The landlord said that the unit had been painted just prior to the tenant taking possession of the rental unit, and he argued that the walls were scratched and scuffed as a result of the tenant's unexpected move. The tenant disputed that she should be held responsible for this portion of the landlord's application arguing that no condition inspection of the unit was performed at the outset of the tenancy, and saying that the unit was left very clean.

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."

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."

After considering the oral testimony of both the landlord and tenant, I find little evidence was presented at the hearing that written notice was provided to the landlord which clearly explained that the tenant intended to vacate the premises before the date on which her tenancy was to end. The tenant said she sent the landlord some text messages, "a few days before" and noted that she had no other option other than to promptly vacate the rental unit because of health concerns. While these concerns may have been well founded, they cannot be considered in light of the *Act*. As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord's testimony that he made *reasonable* efforts to re-rent the unit as quickly as possible (by posting it immediately on a local website) and note that he clearly explained the difficulties in finding a tenant after the 1st of the month. For these reasons, I allow the landlord to collect a monetary award for unpaid rent of November 2017.

The second portion of the landlord's application concerns a claim for painting which was required in the unit, and for cleaning of the unit. Testimony was presented at the hearing by the landlord that the tenant left the numerous items in the rental unit following her departure, and he noted that several scratches, dents and nicks were left on the newly painted walls. The tenant denied these allegations and said that she made sure to clean very thoroughly prior her departure.

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 his entitlement to a monetary award.

After considering the testimony of both parties, and reviewing the evidence submitted to the hearing, I find that the landlord failed to show that he suffered a financial loss equivalent to the amount sought in the application for a monetary award. No invoices, or break down of the expenses were provided to the hearing, and I find that the claimant has failed to prove the existence of the damages and loss. For these reasons, I dismiss this portion of the landlord's application.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenant.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain the tenant's security deposit in partial satisfaction for the monetary award.

Conclusion

I issue a Monetary Order of \$695.00 in favour of the landlord as follows:

Item	Amount
November 2017 rent	\$1,195.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-600.00)
Total =	\$695.00

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: March 9, 2018

Residential Tenancy Branch