



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNRL FFL OPM OPL

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for February 26, 2018. I had allowed the tenant's adjournment application in order for the tenant to be re-served the landlord's application for dispute resolution.

The adjournment decision dated February 26, 2018 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

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

- an Order of Possession, pursuant to section 55.
- a monetary order for unpaid rent and compensation for losses pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant 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.

As confirmed at the last hearing, the tenant indicated that she had moved out on December 31, 2017. As this tenancy has now come to an end, the landlord had cancelled his application for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to monetary compensation for monetary loss, or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

.

Background and Evidence

This fixed-term tenancy began on September 16, 2017, and was to end on September 15, 2018. Monthly rent was set at \$2,100.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$1,050.00. A Mutual Agreement to End Tenancy was signed by both parties on December 4, 2017 to end the tenancy on January 31, 2018. On December 18, 2017 the tenant gave written notice to the landlord that she wished to move out early, and requested the return of her security deposit. The tenant moved out on December 31, 2017, and provided her forwarding address on the same date.

The landlord is requesting \$605.00 for the unpaid rent in December 2017, which the tenant does not dispute as unpaid. The landlord is seeking a further monetary order in the amount of \$2,100.00 for the loss of rental income for January 2018 as the tenant moved out before the date agreed on by both parties, and he was not able to re-rent the unit until March 1, 2018. The landlord testified that he posted the unit for rent on January 7, 2018, and was able to re-rent the unit for March 1, 2018 for \$2,000.00 monthly rent.

The tenant admits to moving out before the date of the Mutual Agreement, but testified that she did so because she feared for her safety. The tenant also testified that the landlord failed to mitigate her exposure to his losses by not posting the unit for rent until January 7, 2018. The landlord responded that he posted on January 7, 2018 as he was under the impression that this tenancy was to end on January 31, 2018 as agreed on by both parties, and as he required time to properly clean the unit after the tenant moved out on December 31, 2017.

Analysis

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.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlords gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlords and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlords notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlords receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord provided undisputed evidence at this hearing that the tenant had not moved out in accordance with the *Act*. I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. Both parties mutually agreed to end this tenancy in writing, but the tenant moved out prior to the date on the Mutual Agreement to End Tenancy. Despite the tenant's testimony that she feared for her safety she did not obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out a month earlier than the date specified in the Mutual Agreement To End Tenancy.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I, therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that he was able to re-rent the suite, and the landlord is claiming one month's rent for loss of rental income for the month of January 2018. I am satisfied that the landlord had made efforts to mitigate the tenant's exposure to the landlord's monetary loss of rent for January 2018, as is required by section 7(2) of the *Act* by listing and re-renting the suite as soon as possible. I, therefore, allow the landlord's monetary claim for one months' rent.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$605.00. Therefore, I find that the landlord is entitled to \$605.00 in outstanding rent for this tenancy.

As the landlord was successful in his application, I am allowing recovery of the filing fee for this application in the amount of \$100.00.

The landlord continues to hold the tenant's security deposit of \$1,050.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$1,050.00 in partial satisfaction of the monetary claim.

Conclusion

As the tenant moved out on December 31, 2017, the landlord had withdrawn his application for an Order of Possession.

I issue a Monetary Order in the amount of \$1,755.00 in the landlord's favour under the following terms for the losses and money owed associated with this tenancy. I allow the landlord to retain the \$1,050.00 security deposit in satisfaction of his monetary claim. The landlord is also authorized to recover \$100.00 for the filing fee.

| Item | Amount |
|-------------------------------|-------------------|
| Loss of Rental Income | \$2,100.00 |
| Unpaid Rent for December 2017 | 605.00 |
| Recovery of Filing Fee | 100.00 |
| Security Deposit | -1,050.00 |
| Total Monetary Order | \$1,755.00 |

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: May 10, 2018

Residential Tenancy Branch