



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S

Introduction

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

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

DS ("landlord") appeared as agent on behalf of the landlord in this hearing, and had full authority to do so. 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.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

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

Background and Evidence

This tenancy began on April 15, 2016. The landlord submitted a copy of the tenancy agreement in evidence that this tenancy "shall commence on April 15, 2016 and continue on a twelve (12) month tenancy." The monthly rent was set at \$1,140.00 at the beginning of the tenancy, and increased to \$1,182.00 as of January 2017. The landlord collected, and still holds, a security deposit in the amount of \$570.00. It was undisputed

that the tenants had moved out on September 30, 2017 after giving notice on September 7, 2017.

The landlord indicated at the beginning of the hearing that they were withdrawing their application for the \$300.00 administrative costs for the tenant's late notice.

The landlord requested monetary compensation as follows:

Item	
Loss of rental income for October 2017	\$1,182.00
Carpet Cleaning	94.50
Drapery Cleaning	109.20
Painting & Drywall repair	45.00
Postage Costs	1.05
Total Monetary Award Requested	\$1,431.75

During the hearing the tenant testified that he was only disputing the landlord's monetary claim for loss of rental income and the postage.

The landlord's agent testified that they were able to re-rent the suite for November 1, 2018, with monthly rent set at \$1,445.00. The landlord's agent testified that the landlord mitigated their costs by posting the suite for rent as soon as they had received notice from the tenant, and was able to re-rent at a higher rate of monthly rent which the landlord's agent testified was at market rate. The tenant testified that the landlord failed to mitigate the tenant's exposure to the landlord's losses by not re-renting the suite for less, and in a more timely manner.

The tenant did not dispute that he had given less than the required amount of notice, as he had a family emergency.

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 45 of the *Act* requires that a tenant give the landlord notice that:

- a) is not earlier than one month after the date the landlord receives the notice, and
- (b) 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.

This applies to both month-to-month, and fixed-term tenancies. I find that it was undisputed by the tenant that he had failed to comply with section 45 of the *Act* by giving less than the required amount of notice to the landlord.

The evidence is clear that the tenant did not comply with the *Act* in ending this tenancy, and I therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is claiming one month's rent for loss of rental income for the month of October 2017. I am satisfied that the landlord had made efforts to mitigate the tenant's exposure to the landlord's monetary loss of rent for October 2017, 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 month's rent.

In regards to the landlord's claim to recover the cost of postage, I find that this is a business expense incurred by the landlord. I am not satisfied that the landlord has demonstrated that this expense was necessary as a result of any violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. On this basis, I dismiss this portion of the landlord's monetary claim.

As the tenant did not dispute the cost of carpet cleaning, drapery cleaning, and painting, I find that the landlord is entitled to \$248.70 for this claim.

The landlord continues to hold the tenant's security deposit of \$570.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$570.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their monetary claim, I allow the landlord to recover the cost of the filing fee from the tenant.

Conclusion

The landlord withdrew their monetary claim for administrative costs in the amount of \$300.00. The landlord's monetary claim for postage costs is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$960.70 in the landlord's favour under the following terms for the losses associated with this tenancy. I allow the landlord to retain the \$570.00 security deposit in satisfaction of their monetary claim. The landlord is also authorized to recover the filing fee.

Item	
Loss of rental income for October 2017	\$1,182.00
Carpet Cleaning	94.50
Drapery Cleaning	109.20
Painting & Drywall repair	45.00
Filing Fee	100.00
Less Security Deposit	-570.00
Total Monetary Award	\$960.70

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: June 15, 2018

Residential Tenancy Branch