



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, MNDL-S, FFL

Introduction

On May 10, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for lost rent and utilities, seeking a Monetary Order for compensation for repairs and damages, and to apply the security deposit and pet damage deposit towards this debt, pursuant to section 67 of the *Act*. The Landlord is also seeking to recover the filing fee pursuant to section 72 of the *Act*.

R.S.L. attended the hearing as the Landlord and V.S.L. attended as an agent for the Landlord. C.J.S. attended the hearing as the Tenant. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served to the Tenant by registered mail on May 14, 2018 and the Tenant confirmed receipt of this package. In accordance with sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent pursuant to section 67 of the *Act*?
- Is the Landlord entitled to a monetary award for unpaid utilities pursuant to section 67 of the *Act*?
- Is the Landlord entitled to a monetary award for cleaning and damages pursuant to section 67 of the *Act*?

- Is the Landlord entitled to apply the deposits towards these debts, pursuant to section 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy originally started on April 15, 2017 as a fixed term tenancy ending on July 31, 2017. Rent was established at \$500.00 per month, due on the last day of each month. A security deposit of \$250.00 and a pet damage deposit of \$250.00 was paid. The Landlord alleges that the parties engaged into another fixed term tenancy from August 1, 2017 that ended on July 31, 2018 and he provided in his written submissions, copies of both tenancy agreements. The Tenant was under the belief that this second tenancy agreement was a fixed term; however, she was advised by the Landlord that recent changes to the legislation eliminated the vacate clause provision, so she assumed that the tenancy was a month to month tenancy.

The Tenant submits that the Landlord gave a verbal Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and she was unaware that a verbal notice was not valid under the *Act*. She then provided 10 days' written notice to end her tenancy early on April 28, 2018 effective for May 7, 2018 as she believed she was entitled to end the tenancy in this manner. As well, she asked the Landlord for compensation of one month's rent based on this Notice and she also offered to pay the first week's rent in May; however, she did not pay rent for May 2018. The Landlord submitted that he advised the Tenant in April that he may end the tenancy with the Notice after the end of the second fixed term tenancy because he wanted to be transparent. He then submitted that near the end of April, the Tenant gave her written notice to end the tenancy based on his conversation about ending the tenancy. The Landlord advised that he did not do anything to mitigate his losses and re-rent the rental unit after the Tenant vacated the premises. He stated that he is seeking \$1,500.00 for lost rent for the months of May, June, and July 2018.

Upon move out, the Tenant stated that the Landlord did not inspect the premises but simply signed off on the move out inspection report and talked about the condition of the carpet. The Landlord confirmed that he glanced over the premises and agreed that it was clean; however, he had concerns over the condition of the carpet due to the Tenant's cat. He advised that the carpet is over 20 years old but is still in good condition and he provided two estimates with respect to the cost of shampooing the carpet. The Landlord submitted two quotes (\$120.00 and \$232.50 plus GST) for shampooing of the carpet and is seeking respective compensation. The Tenant advised that the carpet was likely more than 30 years old, it was filthy at the start of the tenancy, and that her cat was mostly an outdoor cat; therefore, it did not require shampooing.

In addition, the Landlord is seeking monetary compensation of \$81.00 for outstanding utilities and \$11.34 for the cost of registered mail for the Notice of Hearing package.

Analysis

Lost Rent for May, June, and July 2018

There is no dispute that the parties entered into a fixed term tenancy agreement that started on April 15, 2017 with an end date of July 31, 2017. However, while it is the Landlord's belief that the tenancy that commenced on August 1, 2017 was for a fixed length of time, the tenancy agreement that the Landlord provided has not been signed by the Tenant. As such, I do not find that the Landlord and Tenant have entered into a new tenancy agreement under those terms. Consequently, I am satisfied that the tenancy after August 1, 2017 continued on a month to month basis.

Section 44 of the *Act* sets out how tenancies end and Section 52 specifies the form and content of the notice. There is no provision in the *Act* for verbal notice. The undisputed evidence before me is that the Landlord did not serve the Two Month Notice to End Tenancy for Landlord's Use of Property in the approved form, even though it was the Tenant's belief that this was done verbally. As this Notice was not served to the Tenant in accordance with the *Act*, I am not satisfied that the Landlord had ended the tenancy, nor am I satisfied that the Tenant would have been entitled to vacate the rental unit under this belief or would have been eligible for any compensation provisions under the Two Month Notice to End Tenancy for Landlord's Use of Property.

Furthermore, Section 45 of the *Act* sets out how a Tenant may end a tenancy and Section 53 establishes that any incorrect effective dates would be self-corrected. As I am satisfied that this was a month to month tenancy, the *Act* requires that the Tenant provide one, whole month's written notice to end tenancy. While the Tenant mistakenly provided 10 days' written notice and vacated the rental unit contrary to Section 45 of the *Act*, I am satisfied that this end date of the Tenant's notice would automatically self-correct to the end of May 2018. As the Tenant failed to provide a notice that complied with Section 45 and failed to provide payment for May 2018, I find that the Landlord suffered a rental loss. As such, as a result of the Tenant's actions, I am satisfied that the Landlord has established a monetary award for May 2018 rent of **\$500.00**. As this was a month to month tenancy, I do not find that the Landlord is entitled to any further rental loss after May 2018. As such, I dismiss these claims.

Shampooing of the carpet

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the

party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

I also find it important to note that Policy Guideline # 1 outlines that “At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair” and that “The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.”

The undisputed evidence before me is that the carpet that the Landlord provided was well over 20 years old and according to the move in inspection report, the carpet at the beginning of tenancy “has some paint/stains”. As the Tenant had a cat during the period that she rented the premises, I am satisfied that she is responsible for having the carpet shampooed at the end of tenancy. Consequently, I provide the Landlord with an award in the amount of **\$120.00** to satisfy this claim.

Outstanding Utilities

With respect to this claim, all parties agreed that the outstanding utilities in the amount of \$81.00 were due to the Landlord. As a result, I am satisfied that the Landlord should be awarded a monetary claim in the amount of **\$81.00**.

Registered Mail

With respect to this claim, I advised the Landlord during the hearing that this was a cost of doing business that the *Act* does not consider compensatory. As such, I dismiss this portion of the Landlord’s claim.

As the Landlord was mostly successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

May 2018 rental loss	\$500.00
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Shampooing of the carpet	\$120.00
Outstanding utilities	\$81.00
Recovery of filing fee	\$100.00
Less security deposit	-\$250.00
Less pet damage deposit	-\$250.00
TOTAL MONETARY AWARD	\$301.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$301.00** 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: July 11, 2018

Residential Tenancy Branch