



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that their Application for Dispute Resolution (the Application) and evidence was sent to the tenant by way of Registered Mail on February 05, 2018. The landlord provided a copy of the Canada Post tracking number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant is deemed served with the Application and evidence on February 10, 2018, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on September 01, 2017, with a monthly rent in the amount of \$800.00, due on the 31st day or each month with a security deposit in the amount of \$400.00 that the landlord currently retains.

The landlord also provided in evidence:

- A copy of an e-mail from the tenant to the landlord dated January 31, 2018, in which the tenant gives notice that they are ending their tenancy.;
- A copy of an e-mail from the landlord to the tenant dated February 01, 2018, in which the landlord states that they need to complete an inspection with the tenant;
- A copy of an e-mail from the tenant to the landlord dated February 03, 2018, requesting access to the rental unit;
- A copy of a signed letter from the tenant dated February 05, 2018, giving the landlord authorization to keep the tenant's security deposit to apply towards unpaid rent and attesting to the fact that the unit was cleaned when he vacated. The tenant also provides their forwarding address in the letter; and
- A copy of a list of the landlord's expenses related to the end of the tenancy including costs for cleaning and costs for preparing for the dispute resolution including the cost of registered mail for the notice of this hearing.

The landlord gave undisputed testimony that this tenancy ended when the tenant gave notice in January 2018 that they were going to move out of the rental unit for February 2018. The landlord stated that the tenant left \$100.00 in cash for the unpaid rent owing for February 2018, which is \$700.00 less than the total rent owed for that month as per the tenancy agreement. The landlord testified that he was able to find another occupant for the rental unit in March 2018, but suffered a loss in unpaid rent for February 2018 in the amount of \$700.00.

The landlord submitted that they incurred a further loss for cleaning of the rental unit in the amount of \$100.00, including \$30.00 for washing sheets and blankets as well as \$70.00 for cleaning of the rental unit, in addition to a loss associated to the preparation for this hearing including cost of photo copies, registered mail and gas.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 35 of the Act states that, at the end of a tenancy, the landlord must inspect the condition of the rental unit with the tenant, complete a condition inspection report and both the landlord and the tenant must sign the condition report. Section 35 also states that the landlord must offer two opportunities to the tenant for this inspection.

Residential Tenancy Guideline #17 B 7 indicates that the landlord must use a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity.

Having reviewed the documentary evidence, I find that the landlord had the tenant's forwarding address as well as their e-mail address and, although the landlord indicated that they had to complete a condition inspection with the tenant in an e-mail, there is no evidence that the landlord proposed two specific opportunities, either by e-mail or regular mail, to perform the inspection.

For the above reasons, I find that the landlord has extinguished their right to claim for damage as they are not able to establish that a loss exists due to the fact that the landlord is not able to establish the condition of the sheets or rental unit at the end of the tenancy. I find that the landlord did not give the tenant an opportunity to complete

the Condition Inspection Report at the end of the tenancy pursuant to section 35 of the *Act*.

Regarding the landlord's other monetary claims associated with preparing for this hearing, I find that the *Act* and Regulations do not allow for the recovery of the costs associated to the preparation of a hearing other than the fee for filing the application. I find that the landlord must absorb the costs associated to photo copies, registered mail and gas among other items as the costs of doing business.

Therefore, for the above reasons, the landlord's Application for money owed or compensation for damage or loss under the *Act*, Regulations or tenancy agreement is dismissed, without leave to reapply.

Section 45 of the *Act* establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Although the tenant only gave written notice of their intention to vacate the rental unit on February 05, 2018, and the landlord only responded to the tenant's e-mail on February 01, 2018, to confirm that they received the tenant's notice, I accept the landlord's testimony that they mitigated their loss and found a new occupant for March 2018. I accept the landlord's testimony that they are only seeking to recover unpaid rent in the amount of \$700.00 for February 2018.

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. Based on the landlord's evidence and undisputed testimony, I find that the landlord is entitled to a monetary award in the amount of \$700.00 for unpaid rent owing for February 2018.

Section 38 (4) (a) of the *Act* stipulates that a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Having reviewed the documentary evidence, in accordance with section 38 of the *Act*, I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$400.00, in partial satisfaction of the \$700.00 in unpaid rent owing for February 2018.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$400.00, which allows the landlord to recover \$300.00 in unpaid rent for February 2018 and to recover the \$100.00 filing fee for this Application.

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: September 25, 2018

Residential Tenancy Branch