



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation pursuant to Section 67;
- A monetary order for outstanding rent pursuant to Section 67;
- Authorization to retain the security deposit pursuant to Section 72; and
- Reimbursement of the filing fee pursuant to Section 72.

The landlord appeared at the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

The landlord testified the tenant was served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 23, 2018. The landlord provided the Canada Post tracking number in support of service. Under Section 90, this is deemed received by the tenant five days later, on January 28, 2018. I find the tenant was served as required by Section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for damage or compensation pursuant to Section 67;
- A monetary order for outstanding rent pursuant to Section 67;
- Authorization to retain the security deposit pursuant to Section 72; and
- Reimbursement of the filing fee pursuant to Section 72.

Background and Evidence

Testimony provided by the landlord explained this tenancy began on October 1, 2017 and ended on December 31, 2017. Rent was \$2,450.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted.

The tenancy was for a fixed term tenancy for 6 months set to expire on March 31, 2018. The tenant provided a security deposit in the amount of \$1,225.00 which is held by the landlord.

The landlord obtained an Order of Possession against the tenant for non-payment of rent for December 2017. However, the tenant vacated the premises on December 31, 2017 before the landlord served the Order of Possession. The landlord claims reimbursement of cleaning costs, estimated repair costs, unpaid rent for December 2017, and lost revenue from January 1-15, 2018.

The landlord's claims are summarized as follows:

ITEM	AMOUNT
Strata fine	\$200.00
Cleaning	\$100.00
Repairs to bedroom wall	\$200.00
Balance owed for Rent December 2017	\$100.00
Rent January 1-15, 2018	\$1,250.00
TOTAL	\$1,850.00
Less Security Deposit	-\$1,250.00
Monetary Award Claimed	\$600.00

A condition inspection was conducted on move-in and move-out at which both parties attended. A copy of the report was submitted by the landlord.

The report indicates that the premises were in good condition on move-in. Notations on move in are as follows:

- Kitchen: “one or 2 holes in walls of kitchen”, paint chips and broken handle on cupboard;
- Main bath: dusty ceiling, scratches in cabinets, broken sink stop;
- Master bedroom: dents behind bed and door

On move-out, the following were noted in the report:

- The premises needed cleaning with a margin note that estimated cleaning costs were “\$100”; tenant attached a note objecting to paying any cleaning costs as the unit was not clean when she moved in;
- Damage to the bedroom wall was noted; in a margin note costs were estimated as \$200.00; this was not initialled by the tenant;
- Tenant agreed to pay the strata fine of \$200.00.

The landlord’s supporting evidence was as follows:

- The condition inspection report supported the claim for cleaning, repairs and reimbursement of the strata fine;
- The photographs evidenced the need for cleaning, showing a dirty fridge and stove, and a bathroom in need of cleaning;
- The landlord did not submit a copy of the invoice, but testified she paid a cleaner \$120.00;
- The photographs showed four holes in the bedroom wall, each with an estimated 8 cm. circle of drywall compound filling the holes; the landlord testified she anticipated final repair costs of \$200 although she has not yet finished repairing the holes.

The landlord testified the tenant paid \$2,350.00 towards rent for the month of December 2017 at the time she vacated, leaving a balance owing the landlord of \$100.00. The landlord claims compensation in this amount.

The landlord claims reimbursement for lost rental revenue for the first half of January 2018. The landlord testified to efforts to find a replacement tenant in the month of December including posting on a popular social media website in early December, obtaining names of three interested new tenants, serving the tenant with notice to allow viewing of the rental unit, and being denied entry by the tenant. As a result, the landlord explained she was unable to rent the unit again until January 15, 2018.

The landlord claims damages for loss of revenue in the amount of \$1,225.00, being one-half a month's rent.

Analysis

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other.

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 resulted 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 to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a monetary award. The landlord must take all steps to mitigate, or reduce, the landlord's losses.

Section 37(2) of the *Act* states, "when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear,"

Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the inspection report was completed in accordance with the regulations. I accept the tenant's acknowledgement in the report that she is responsible for the strata fine of \$200.00.

However, I turn to the totality of the evidence with respect to the cleaning and repair costs as the tenant had not agreed to reimburse the landlord for these expenses. While the tenant signed the report, she did not specifically agree to compensate the landlord in the amount claimed of \$200.00 for the damage.

In the absence of any contrary evidence, I accept the landlord's testimony as supported by the report and the photographs that the unit needed cleaning when the tenant vacated. Based on this finding, the landlord took reasonable and necessary steps to have the unit cleaned. I find the landlord is entitled to a monetary award for cleaning of \$100.00.

For the same reasons, I also accept that the tenants caused damage to the wall as referred to in the report and as evidenced in photographs. I find the landlord's estimate of \$200.00 to repair the holes in the wall to be a reasonable in the circumstances.

Section 26 of the Act provides that a tenant is required to pay rent when due under the terms of their tenancy agreement. Where a tenant does not pay rent that is payable the landlord may seek recovery of the unpaid rent.

The parties entered into a fixed term tenancy agreement that was set to expire on March 31, 2018. A tenant may not legally end a fixed term tenancy agreement except in a few limited and specific circumstances provided under the *Act*, which are cases where the landlord has violated a material term of a tenancy agreement; a tenant is fleeing domestic violence or going into a care home; or, as authorized by the Director. Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

- 45(2)** A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord 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.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

I accept the landlord's undisputed testimony the tenant paid rent in the amount of \$2,350.00 for the month of December 2017 leaving a balance owing of \$100.00 and the tenant did not comply with section 45(2).

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

7 (2) A landlord or tenant 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**. (*emphasis added*)

The landlord testified to efforts to find suitable new tenants and the tenant's refusal to allow viewing of the rental unit. As a result, the landlord could not show the unit until after the tenant vacated and the unit was cleaned. The landlord testified the earliest possible date she could rent the unit again was effective January 15, 2018.

I find the landlord made all reasonable efforts to find a replacement tenant.

I accordingly find the landlord is entitled to compensation for rent for the first two weeks of January 2018 in the amount of \$1,250.00

As the landlord has been successful in her claim, she is entitled to reimbursement of the filing fee.

In accordance with the offsetting provisions of Section 72 of the *Act*, I allow the landlord to retain \$1,250.00 of the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

A summary of my award follows:

ITEM	AMOUNT
Strata fine	\$200.00
Cleaning	\$100.00
Repairs to bedroom wall	\$200.00
Balance owed for Rent December 2017	\$100.00
Rent January 1-15, 2018	\$1,250.00
Filing fee	\$100.00
TOTAL	\$1,950.00
Less Security Deposit	-\$1,250.00
Monetary Award to Landlord	\$700.00

The landlord is entitled to a Monetary Order in the amount of \$700.00.

Conclusion

The landlord is entitled to a Monetary Order in the amount of \$700.00. This Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial court (Small Claims) to be 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 4, 2018

Residential Tenancy Branch