



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GENESIS PROPERTY MANAGEMENT LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S MNDL-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 compensation for damages pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that each tenant had been individually served with the landlord's notice of this hearing and evidence by Canada Post registered mail on February 7, 2018, and provided two Canada Post registered mail tracking numbers as proof of service, which I have noted on the cover sheet of this decision. With the agreement of the landlord's agent, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was delivered to and signed for by the tenants. As such, I find that the tenants were served with the notice of this hearing in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?
Is the landlord entitled to a monetary award for damage or compensation?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The landlord's agent provided undisputed testimony regarding the following information pertaining to the tenancy:

- The month-to-month tenancy began on August 15, 2017, although the landlord's agent testified that this tenancy ran from the first of the month, however the tenants paid a pro-rated amount of rent to move in mid-month for August.
- Monthly rent of \$850.00 was payable in advance by the last day of the month.
- The tenants paid a \$425.00 security deposit at the beginning of the tenancy, which continues to be held by the landlord.
- The rental unit consisted of two bedrooms and one bathroom, encompassing approximately 500 square feet.

As the tenants did not attend the hearing, the landlord's agent provided the following unchallenged testimony:

- The tenants sent an email to the landlord on January 15, 2018 as their notice to end tenancy, stating that they would move out by February 15, 2018.
- The landlord's agent cautioned the tenants that the tenancy ran on a monthly basis, not mid-month.
- The tenants did not make any rent payment for the month of February 2018.
- The tenants vacated the rental property and returned vacant possession to the landlord on February 1, 2018.
- The tenants provided their forwarding address to the landlord by text message on February 2, 2018.

The landlord's agent testified that the rental unit had been painted in April 2017, a few months prior to the tenants moving into the unit. The appliances were new and the rental unit had been professionally cleaned by cleaning staff prior to the tenants moving in.

The landlord's agent testified that the condition of the rental unit was documented on the tenancy agreement, which had been signed by both parties.

The landlord's agent submitted photographic evidence to support his testimony of the clean condition and good working order of the rental unit prior to the tenants moving in. The landlord's agent noted that the photographs show a floor transition piece missing, but testified that this was repaired prior to the tenants taking possession of the rental unit.

The landlord's agent testified that a condition inspection report at move-out was not completed with the tenants as they were not responsive to his efforts to communicate with them.

The landlord's agent testified that the apartment smelled of smoke, and the walls and ceiling had to be cleaned several times with a special cleaning product to remove the smell and film left by the smoke, prior to being repainted. The landlord's agent referenced that the tenancy agreement requests tenants not to smoke in their rental units, and clearly states that tenants will be held responsible for the cleaning costs if it is found they have smoked in the rental unit.

The landlord's agent testified that the condition of the rental unit at move-out was "filthy". The appliances, as well as the walls in the kitchen and bathroom were covered in spilled food and grime, the fridge had not been wiped out, the kitchen cupboards were covered in dirt, both inside and out, and the floors were not cleaned. Further to this, the landlord's agent claimed that repairs had to be made to fix a broken light switch plate, and to patch and fill an excessive number of holes that had been drilled into the walls for screws and to run cable/wiring, without permission.

The landlord's agent submitted photographic evidence in support of his testimony regarding the condition of the rental unit at move out. The landlord's agent also submitted receipts for the costs related to cleaning, repairs and painting of the rental unit.

The landlord's agent's written submissions into documentary evidence note that it took until February 5, 2018 for the rental unit to be fully cleaned.

The landlord's agent testified that he did not advertise the rental unit for re-renting until the middle of March 2018 and secured a new tenancy agreement for April 2018.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation due to damages as a result of lost rental revenue, cleaning costs, and repairs and painting costs. I have addressed my findings on each of these heads of claim.

I note that that landlord also submitted a claim of \$28.03 for the cost of producing photographs for his submitted evidentiary materials for this hearing. I explained to the landlord's agent that administrative costs related to the preparation of a party's dispute application or evidence are not considered recoverable damages or losses, as only the recovery of the cost of the filing fee for the dispute application is considered recoverable. Therefore, I dismiss the landlord's claim for these administrative costs in the amount of \$28.03.

Lost Rental Revenue

In this case, the landlord has claimed rental revenue loss for the month of February 2018 due to the tenants providing insufficient notice to end the tenancy.

Based on the landlord's agent's testimony and the tenancy agreement submitted into documentary evidence, I find that the landlord and tenants had a month-to-month tenancy, which is defined as a "periodic tenancy" under the *Act*. I find that monthly rent was payable in advance on the last day of each month per the terms of the tenancy agreement.

Section 45(1) of the *Act* sets out how a tenant may end a periodic tenancy:

- 45 (1) A tenant may end a periodic 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, 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.

Applying the legislative provisions to the current matter, the tenants gave notice to the landlord by email on January 15, 2018 that they wished to end the tenancy effective February 15, 2018. I find that this tenancy end date was not in compliance with section 45 of the *Act*, and that the earliest date the tenancy could end was February 28, 2018.

Section 45(4) of the *Act* requires that the notice must comply with section 52 of the *Act* in terms of the form and content of the notice to end tenancy.

Section 52 of the *Act* explains the requirements for giving notice to the other party to end a tenancy, and provides the following, in part:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
 - (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,...

In this case, the tenants provided their notice to end tenancy by email on January 15, 2018, which is not in compliance with section 52 of the *Act*. However, as the landlord's agent confirmed receipt of the email, and no further notice was provided by the tenants, I accept that this was the date notice was given by the tenants to end the tenancy. I also accept that February 15, 2018 was the date provided by the tenants as their intended vacancy date. As I have found that February 28, 2018 was the earliest date the tenants could have ended their tenancy, I find that the tenants failed to give notice to end the tenancy in compliance with the *Act*, and as a result the landlord experienced a monetary loss.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss provides guidance regarding the expectation for a landlord to mitigate a rental income loss due to a tenant providing short notice to end a tenancy, as follows:

*Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. **The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.** Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.*

[My emphasis added]

The landlord's evidence indicated that repairs and cleaning to the rental unit were completed by February 5, 2018, however the landlord's agent testified that he did not advertise to re-rent the unit until the middle of March 2018. Although the tenants vacated the rental unit as of February 1, 2018, the tenants notice to end tenancy took effect on February 15, 2018. Therefore, I find that the landlord should have made reasonable efforts to find a new tenant beginning February 15, 2018. As the landlord failed to do so, I find that the landlord did not mitigate the rental loss for the last two weeks of February.

As such, based on the documentary evidence and testimony provided, I find the landlord has shown, on a balance of probabilities, that a loss of one-half of a month's rent in the amount of \$425.00 was incurred as a result of the tenants' non-compliance with the terms of the tenancy agreement and the *Act*. Accordingly, I find that the landlord is entitled to a monetary award in this amount.

Cleaning, Repair and Painting Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

In this matter, I find that, on a balance of the probabilities, and based on the documentary and photographic evidence submitted, as well as the unchallenged testimony presented, the landlord has proven the claim for damages stemmed directly from the tenants' failure to leave the rental unit "reasonably clean" and "undamaged" upon vacating, as required by section 37 of the Act.

However, a claimant must also establish the monetary amount of the damages related to the costs claimed. Section D of the Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss explains the requirement for a claimant to provide compelling evidence, such as receipts, to establish the monetary amount of the damages, as follows:

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

The landlord submitted receipts for professional cleaning services totalling \$510.00. Therefore, I find that the landlord has provided sufficient evidence to establish the monetary amount of the damages related to the cleaning costs. Accordingly, I find that the landlord is entitled to a monetary award in this amount.

The landlord also submitted a receipt for \$375.00 for the cost of professional painting services. I find that the landlord has provided sufficient evidence to establish the monetary amount of the damages related to cost of painting services.

In determining damages related to repair and replacement costs for building elements, I must base my assessments in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 states that interior painting has a useful life of four years, or 48 months. As the rental unit was last painted in April 2017, only 79% of the useful life of the paint was left at the time the tenancy ended in February 2018. Therefore, I allocate 79% of \$375.00, which is \$296.25 for the cost of painting the rental unit.

The landlord has claimed \$331.94 for the cost of paint supplies, but failed to submit any receipts in support of this claim. I allow the landlord a nominal damages award of \$50.00 for paint supplies as the landlord failed to establish the actual cost for these supplies, however I find that the damage to the rental unit requiring paint was established by the landlord's photographic evidence.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$1,281.25 for: loss rental revenue of \$425.00; cleaning costs of \$510.00; and repair and painting labour costs of \$296.25; and a nominal damage award for paint of \$50.00.

The landlord continues to retain the tenants' \$425.00 security deposit. No interest is payable on the deposit during the period of this tenancy.

Section 38 of the *Act* requires that, within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing, the landlord either:

- return the tenant's security deposit in full;
- reach written agreement with the tenant to keep some or all of the security deposit; or
- file for dispute resolution for authorization to retain the security deposit.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

The landlord's agent confirmed that the tenancy ended on February 1, 2018 and that he received the tenants forwarding address on February 2, 2018. Therefore, I find that February 2, 2018 is the date which triggers the 15-day time limit provided by section 38 of the *Act*.

On February 6, 2018 the landlord filed an Application for Dispute Resolution to claim against the tenants' security deposit for damages. As this is within the 15-day time limit, I find that the landlord complied with section 38 of the *Act* and is entitled to claim against the security deposit for damages owed by the tenants.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation of \$1,281.25 owed by the tenants to the landlord, against the tenants' \$425.00 security deposit held by the landlord, in partial satisfaction of the total monetary award.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$956.25.

A summary of the monetary award is provided as follows:

Item	Amount
Loss of rental revenue	\$425.00
Cleaning costs	\$510.00
Repair and painting labour costs	\$296.25
Nominal damages award for paint costs	\$50.00
Monetary award in favour of landlord	= \$1,281.25
LESS: Remainder of the security deposit held by landlord	(\$425.00)
PLUS: Recovery of cost of filing fee for application	+ \$100.00
Total Monetary Order in Favour of Landlord	= \$956.25

Conclusion

I order the landlord to retain the \$425.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award for damages as a result of the tenants' failure to comply with the tenancy agreement and the *Act*.

I issue a Monetary Order in the landlord's favour against the tenants in the amount of \$956.25 in satisfaction of the remaining amount of loss owing, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: October 3, 2018

Residential Tenancy Branch