



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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'). In accordance with section 89 of the Act, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

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 fixed-term tenancy began on April 1, 2017, and was to end on March 31, 2018. The tenant moved out early on October 31, 2017. Monthly rent was set at \$1,950.00, and

the landlord collected a security deposit of \$975.00.

The tenant does not dispute moving out before the end of the fixed term tenancy, but testified that she had permission to do so by the landlord. The landlord testified that no mutual agreement was signed to end terminate this tenancy as of October 31, 2017.

The landlord requested monetary compensation as follows:

Item	
Online Rental Forum Advertisement Fee	\$36.75
Online Rental Forum Advertisement Fee	36.75
Replacement Keys	16.25
Replacement Garage Transmitter	50.00
Carpet Repair	300.00
Counter Repair	75.00
Loss of Rental Income	5,400.00
Carpet Cleaning	186.00
Move In Fee	200.00
Total Monetary Order Requested	\$6,300.75

The landlord testified that despite his attempts to find a new tenant as soon as possible, including posting ads in a paid rental forum, he was unsuccessful in filling the vacancy until December 26, 2017 due to the time of year. The landlord also testified that the rent was reduced by \$500.00 to \$1,450.00, as well as change his no pet policy in order to secure a new tenant and mitigate his losses. The landlord is seeking monetary compensation for his loss of rental income for the remaining period of this fixed term tenancy as follows: \$1,950.00 for November and December 2017, and \$500.00 in rent differential for January 2018 to March 2018 for a total monetary loss of \$5,400.00.

The landlord is also seeking reimbursement of the move-in fee for the new tenant in the amount of \$200.00, as well as the cost of online advertising. The landlord testified that the tenant failed to return a set of keys and a garage transmitter, which was replaced by the landlord.

The landlord testified that the tenant left stains on the carpet and damaged the countertop, which required cleaning, and repairs. The landlord filed a monetary claim for the tenant's failure to leave the unit in reasonably clean and undamaged condition.

The tenant disputed the landlord's monetary claim stating that the landlord gave her several options in how to end this tenancy, and that she has chosen the option to end

this tenancy as of October 31, 2017 with the penalty of forfeiting her damage deposit for this tenancy. The tenant included in her evidence the email communication between both parties. The tenant testified that the landlords later revoked their original agreement.

The tenant disputes the landlord's monetary claim for carpet cleaning, and submitted receipts for carpet cleaning to support that she had paid for professional cleaning at the end of the tenancy. The tenant also testified that she had attempted to help the landlord locate a new tenant for this tenancy, but the landlord did not select the tenants she found.

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 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlords gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlords and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlords notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlords 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.

The landlord provided undisputed evidence at this hearing that the tenant had not moved out before the end of this fixed term tenancy. I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. Although I find that the email correspondence submitted by the tenant does support that there was a discussion which originally involved an option allowing the tenant to move-out early, I find that the correspondence shows that this discussion did not result in a formal Mutual Agreement To End Tenancy being signed by both parties. I find that the tenant decided to move out after the landlord informed the tenant that she was still bound by the *Act* and the tenancy agreement, and that the landlord may claim for any losses associated with the tenant's failure to comply with the *Act* and tenancy agreement. No formal Mutual Agreement to End Tenancy was signed by both parties, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out approximately 5 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is claiming two full month's rent for loss of rental income for the months of November and December 2017, and the rent differential for the remaining months of the fixed-term tenancy. I am satisfied that the landlord had made efforts to mitigate the tenant's exposure to the landlords' monetary loss of rent by as is required by section 7(2) of the *Act* by listing and re-renting the suite as soon as possible, as well as reducing the monthly rent and changing the terms of the tenancy by allowing pets. I, therefore, allow the landlord's monetary claim for loss of rental income in the amount of \$5,400.00. I also allow the landlord's monetary claim for the cost of advertising the rental unit.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I am not satisfied that the landlord's evidence sufficiently supports that the tenant damaged the carpet and countertop during this tenancy. Furthermore, the

tenant's evidence supports that she had paid for professional cleaning of the carpet. As the landlord failed to provide sufficient evidence to support that the tenant did not comply with section 37(2)(a) of the Act, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I accept the testimony of the landlord that the tenant did not return the full set of keys and garage transmitter to the landlord, and allow the landlord's monetary claim for the replacement of both of these items.

The landlords also submitted a monetary claim for the move-in fee for the new tenant. I find that this is an expense that would have been incurred by the landlord in the operation of this business with each new tenancy, and not a loss directly due to the tenant's failure to comply with the Act and tenancy agreement, and therefore I dismiss this portion of the landlord's monetary claim without leave to reapply.

As the landlord was not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

Conclusion

I issue a Monetary Order in the amount of \$5,589.75 in the landlord's favour under the following terms for the losses associated with this tenancy. I allow the landlord to retain the \$425.00 security deposit in satisfaction of their monetary claim. The landlord is also authorized to recover \$50.00 for the filing fee.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim if the tenant's security deposit is still in the possession of the landlord.

Item	
Online Rental Forum Advertisement Fee	\$36.75
Online Rental Forum Advertisement Fee	36.75
Replacement Keys	16.25
Replacement Garage Transmitter	50.00
Loss of Rental Income	5,400.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$5,589.75

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.

The remainder of the landlord's monetary application is dismissed without leave to reapply.

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 1, 2018

Residential Tenancy Branch