



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security/pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agents M.W. and D.C. attended on behalf of the landlord, and are herein referred to as "the landlord". Tenant J.M. attended on behalf of the tenants, and is herein referred to as "the tenant".

As both parties were present, service of documents was confirmed. The landlord testified that the tenant was served with the notice of this hearing and evidentiary materials by registered mail, which was confirmed by the tenant. The tenant testified that the landlord was personally served with their evidentiary materials, which was confirmed by the landlord. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 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 compensation for damages or loss?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

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 copy of the written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to their written tenancy agreement:

- The parties had previous tenancy agreements dating back to January 2014, however the tenancy agreement under dispute in this matter began as a fixed term on September 1, 2016 with a scheduled end date of August 31, 2017.
- Monthly rent of \$4,600.00 was payable on the first day of the month.
- At the beginning of the original tenancy in January 2014, the tenant paid the landlord a security deposit of \$2,150.00, which the landlord continued to hold.
- A condition inspection of the rental unit was completed by the landlord and the tenant at the beginning of the tenancy, and a written report of this inspection was completed by the landlord and signed by the tenant.
- On December 28, 2016, the tenant provided to the landlord one month's written notice to end the tenancy on January 31, 2017.
- Neither party participated in a condition inspection of the rental unit at the end of the tenancy.
- The tenant never provided his forwarding address to the landlord.

The parties were in dispute regarding the end date of the tenancy. The tenant acknowledged that he continued to have access to the rental unit and left personal property at the rental unit until mid-February 2017. The landlord claimed that the tenant did not return vacant possession of the rental unit to the landlord until mid-March 2017.

The landlord submitted the following claims for compensation on their Application for Dispute Resolution:

Item	Amount
Unpaid rent for February and March 2017 (2 x \$4,600.00)	\$9,200.00
Repairs Costs	\$1,332.00

Cleaning Costs	\$662.00
Total Claim	\$11,194.00

The landlord submitted a Monetary Order Worksheet as part of the evidentiary materials which included an additional claim of \$2,257.50 for an “Administration Fee”. However, I note that the landlord failed to include this additional claim for the Administration Fee in the landlord’s Application form.

In accordance with Rules 2.2 and 6.2 of the Residential Tenancy Branch Rules of Procedure the landlord’s monetary claim is limited to what is stated on the Application form dated April 19, 2018. An applicant can request to amend their Application by submitting an Amendment to Application form. I do not find that the landlord has submitted such a form or made a formal request to amend their Application prior to the hearing, or in accordance with the *Act*. Therefore, I dismiss the landlord’s claim for the Administration Fee without leave to reapply.

I have addressed the remaining heads of claim separately below.

Unpaid Rent

The landlord claimed \$9,200.00 for unpaid rent for the months of February and March 2017. The landlord claimed that the tenant gave notice on December 28, 2016 to end the fixed term tenancy early and did not vacate his personal belongings from the rental unit until mid-March 2017.

The landlord testified that the rental unit was re-rented for April 1, 2017. The landlord testified that they began advertising the rental unit online using a popular free classified website starting on December 30, 2016. The landlord did not submit a copy of the rental advertisement. When questioned, the landlord was unable to provide the date when showings of the rental unit began and did not submit any evidence regarding the number of showings. The landlord could only give an estimate that there were 20-30 showings of the rental unit. The landlord testified that the rental unit was re-rented at the same monthly rent.

The only evidence submitted by the landlord in support of their efforts to re-rent the rental unit was an advertising record of the dates the landlord posted their various rental property postings, including the ones related to the rental unit in dispute. Because the advertising record included other rental properties, it was not very clear which postings pertained to the rental unit in this dispute, however I note that the record indicated

postings associated with the rental unit address on December 30, 2016 and renewed in January and February 2017. There were no dates indicated for March 2017.

The tenant claimed that the landlord failed to correctly advertise the rental unit as a “house” rather than as an “apartment”. As a result, the tenant claimed that this hindered the re-rental of the unit. Further, the tenant claimed that there were significant maintenance deficiencies and repairs required to the property which he believed contributed to the delay in re-renting the rental unit. The tenant submitted photographic evidence of the repair issues in the rental unit and referenced the emails submitted into evidence by the landlord in which the tenant questions the landlord’s posting category for the rental unit.

Repair and Cleaning Costs

Repairs

The landlord claimed \$1,332.00 in damages caused by the tenant. The landlord submitted into documentary evidence three invoices for repair work completed. I note that one of the invoices is for the repair of the house front entrance light due to a faulty fuse. I also note that the other two invoices provide a list of items, but no breakdown of the cost for labour or parts, which provides me with no means of determining if the total amount listed at the bottom of the invoice is reasonable or not. I also note items that may be considered landlord’s maintenance responsibilities, or reasonable wear and tear, such as “washroom bath tub caulking” are listed and claimed as damages caused by the tenant.

The tenant disputed the landlord’s claim and submitted his own photographic evidence depicting prior water damage to the rental unit from 2014 and testified to poor construction of the building elements in the rental unit resulting in premature wear and tear due to normal use.

Cleaning Costs

The landlord claimed \$336.00 for carpet cleaning and \$200.00 for yard clean-up. The landlord submitted photographic evidence of the rental unit yard which was heavily covered in leaves. The landlord testified that the tenant was responsible for yard maintenance per the terms of the tenancy agreement. The tenant confirmed that the photographs submitted by the landlord represented the condition of the yard at the end of the tenancy. The tenant also acknowledged that he did not have the carpets cleaned at the end of the tenancy.

Analysis

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

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Each of the landlord's heads of claim are addressed separately below.

Unpaid Rent

Section 45 of the *Act* prohibits a tenant from ending a fixed term tenancy "earlier than the date specified in the tenancy agreement as the end of the tenancy". Section 45.1 of the *Act* allows for exceptions in the event that a tenant is at risk from family violence or requires long-term care.

In this case, the tenant did not submit any evidence to claim an exception under section 45.1 of the *Act* for ending the fixed term tenancy early. Therefore, pursuant to section 45 of the *Act*, I find that the tenant contravened the *Act* by ending the fixed term tenancy early.

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, in part:

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...

I find it reasonable, on a balance of probabilities, that the landlord would have required the month of February 2017 to advertise the rental unit, conduct showings and secure a new tenancy agreement for March 1, 2017. However, the landlord has claimed two months of rent as compensation for loss due to the landlord not re-renting the rental unit until April 1, 2017.

I find that the landlord has not submitted sufficient evidence to prove on a balance of probabilities that reasonable efforts were undertaken to re-rent the unit for March 1, 2017, therefore mitigating the landlord's loss by one month's rent. No copy of the advertisement was provided into evidence by the landlord, and the landlord could not provide any record of the dates when showings of the rental unit took place. As well, the landlord did not submit a copy of the new tenancy agreement into evidence, in order to verify that the rent amount and terms of the tenancy were the same as under the tenancy agreement with the tenant. Therefore, I am unable to determine the extent of effort taken by the landlord or to verify that the landlord did not change any terms of the tenancy in the advertisements for the rental, which may have impacted the landlord's ability to re-rent the unit.

As such, I find that the landlord is entitled to one month's rent for the month of February 2017 in the amount of \$4,600.00 as compensation for loss due to the tenant's contravention of the fixed term tenancy agreement, due to my finding that the landlord failed to provide sufficient evidence of mitigation of loss for the additional month of rent claimed for March 2017.

Repair and Cleaning 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,...

There was no written move-out condition inspection report submitted into documentary evidence by the landlord as it was never completed. This report would attest to the condition of the rental unit at the end of the tenancy. The landlord submitted invoices and photographic evidence of the condition of the rental unit to support his claim for repairs and cleaning costs.

Repairs

The landlord's testimony regarding repairs was disputed by the tenant. As the onus for proving a claim for damages is on the party seeking compensation, the landlord must prove his claim on a balance of probabilities. When there is only disputed testimony, documentary evidence can add weight to shift the balance of probabilities in favour of the claimant seeking compensation.

The invoices submitted by the landlord for the repair costs do not provide a breakdown of the costs for labour versus parts, in order to assess the reasonableness of the costs claimed, and mitigation of loss by the landlord. Further, the invoices do not separate out the repairs due to normal "wear and tear" and repairs which are the maintenance responsibilities of the landlord, versus the repairs caused by the tenants due to deliberate damage or neglect.

As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has not provided sufficient evidence in support of his claim for repair costs in the amount of \$1,332.00 and therefore this claim is dismissed without leave to reapply.

Cleaning Costs

The tenant also acknowledged that he did not have the carpets cleaned at the end of the tenancy. Therefore, the testimony regarding the cleaning of the carpets is not in dispute.

The tenant confirmed that the photographs submitted by the landlord represented the condition of the yard at the end of the tenancy.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides explanation regarding the responsibility of the tenant for cleaning the rental unit at the end of a tenancy, as well as yard maintenance. The sections relevant to this matter have been noted below, in part:

CARPETS

...

3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

As the tenant had resided in the rental unit for successive tenancy agreements beginning in 2014, and as it is a tenant's responsibility to clean the carpets, I find that the landlord is entitled to their claim for carpet cleaning in the amount of 336.00.

PROPERTY MAINTENANCE

...

3. *Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower bed.*

The rental unit was a single-family dwelling with a yard. As routine yard maintenance includes the seasonal clean-up of leaves, I find that the tenant was responsible for completing this maintenance and as such, the landlord is entitled to their claim for yard maintenance in the amount of \$200.00

Therefore, I find that the tenant is responsible for the cost of the carpet cleaning and yard clean-up in the amount of \$536.00. I grant the landlord a monetary award for these costs.

The landlord also submitted another invoice in the amount of \$120.00 for labour for "handling the repairs and cleaning for Tenant". This invoice does not provide any

details on the hours of labour or cost for labour, or how the tenant is responsible for this cost. Therefore, based on the evidence and testimony before me, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to demonstrate that this loss directly stemmed from the tenant's contravention of the tenancy agreement, nor has the landlord established the actual value of this loss. As such, this claim is dismissed without leave to reapply.

Summary of Landlord's Claim

As the landlord succeeded in obtaining a monetary award against the tenant, I find that the landlord is entitled to recover the cost of the \$100.00 filing fee for this Application from the tenant.

In summary, I find that the landlord is entitled to a monetary award as follows:

Item	Amount Claimed
Unpaid Rent	\$4,600.00
Carpet cleaning and yard cleaning costs	\$536.00
Recovery of the filing fee	\$100.00
Total Monetary Award in Favour of the Landlord	= \$5,236.00

Security Deposit and Set-Off of Monetary Award

The tenant confirmed that he never provided his forwarding address to the landlord. The tenant did not know how the landlord obtained his current mailing address for service of documents for this hearing.

Section 39 of the *Act* provides that a landlord is entitled to retain the security deposit if the tenant does not provide a forwarding address within one year of the end of the tenancy. The tenant acknowledged that he did not provide vacant possession of the rental unit to the landlord until mid-February 2017, I find that the tenancy effectively ended February 15, 2017. As more than one year has now passed since the end of the tenancy, I find that the landlord is entitled to retain the \$2,150.00 security deposit for this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, the amount of the security deposit retained by the landlord will be set-off against the amount of the monetary award in favour of the landlord to be paid by the tenant.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing of \$3,086.00. The breakdown is as follows:

Item	Amount
Monetary award to landlord for compensation (unpaid rent; carpet and yard cleaning; recovery of the filing fee)	\$5,236.00
LESS: Security deposit retained by the landlord	(\$2,150.00)
Total Monetary Order in Favour of Landlord	\$3,086.00

Conclusion

I order that the landlord retain the security deposit of \$2,150.00 and I issue a Monetary Order in the amount of \$3,086.00 in favour of the landlord.

The landlord is provided with this Order 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: November 21, 2018

Residential Tenancy Branch