



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

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

- A monetary award for damages, loss and unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

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. The corporate landlord was represented by its agent CF (the “landlord”) who primarily spoke and the building manager.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord’s application for dispute resolution dated September 11, 2018 and evidence. The tenant said that they did not serve any evidence. Based on the testimonies I find that the tenant was served with the landlord’s application and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord said that they have received more accurate receipts for their losses since the application was filed. As I find that obtaining more accurate evidence of losses is reasonably foreseeable, in accordance with section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I allow the landlord to decrease the monetary claim from \$2,280.00 to \$1,981.30.

.

Issue(s) to be Decided

Is the landlord entitled to the monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The parties agree on the following facts. This fixed term tenancy began on May 1, 2018 and was scheduled to end in April, 2019. The monthly rent was \$930.00 payable on the first of each month. A security deposit of \$455.00 was paid at the start of the tenancy and is still held by the landlord. The tenant gave written notice that they considered the tenancy frustrated by an email of August 29, 2018. The tenant moved out and did not pay rent for September 2018.

The landlord seeks a monetary award in the amount of \$1,981.30 comprised of unpaid rent for September 2018 of \$930.00, liquidated damage of \$200.00 and the cost of cleaning and maintenance of \$851.30. The landlord submitted into evidence copies of receipts and invoices in support of their monetary claim.

The landlord testified that furniture was left in the suite and that the tenant did not participate in a move out inspection. The landlord did not submit a copy of a move in condition inspection report but testified that one was prepared. The tenant did not dispute that there was an inspection report prepared at the start of the tenancy.

The tenant testified that in June 2018 they discovered bed bugs in the rental suite and notified the landlord of the issue. The tenant said that despite the landlord's efforts in hiring pest control companies to attend the problem was not resolved. The tenant submits that due to the landlord's failure to resolve the bed bug infestation the rental unit was uninhabitable and the tenancy was frustrated.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order 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 stemmed directly from a violation of the agreement or a contravention on the part of the

other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Policy Guideline 34 sets out that a tenancy agreement is frustrated when an unforeseeable event has so radically changed the circumstances that fulfillment of the agreement as originally contemplated is now impossible. The tenant's central submission is that the tenancy agreement was frustrated as the landlord did not adequately deal with the bed bug problem in the suite.

I do not find that the mere presence of bed bugs has affected the ability of the parties to fulfill their tenancy agreement. There is insufficient evidence to find that the rental unit was made uninhabitable for the occupant due to the bed bugs. Pests may be unpleasant and a nuisance but I do not find that they cause a tenancy agreement to be frustrated. While both parties spent a considerable amount of time testifying as to the effectiveness of the treatment performed and the continuing presence of pests in the rental suite, I ultimately find the details of the bed bug situation to be of little relevance to the matter at hand. The presence of bed bugs does not give rise to frustration of the tenancy as it does not materially change the ability of the parties to fulfill the original agreement. Bed bugs are a nuisance and maybe a health hazard but do not so fundamentally alter the circumstances so as to frustrate a tenancy agreement. I find that the discovery of bed bugs and the landlord's failed efforts to conclusively deal with them did not frustrate the tenancy agreement and the parties were still obligated to fulfill the terms of the Act, regulations and agreement.

Section 26(1) of the Act provides that the tenant must pay the rent when due regardless of whether the landlord complies with the Act. In the case at hand I have found that the landlords have not violated the Act, regulations or tenancy agreement and acted in a reasonable manner arranging for pest control to attend the unit. As the tenancy was ongoing the tenant was obligated to pay the full rent amount. The tenant chose to break their fixed term tenancy agreement and vacated the unit but they were still required to pay their monthly rent.

The tenant gave written notice on August 29, 2018 that they considered the tenancy frustrated and failed to pay the rent for September 2018. I find that the tenant was obligated to pay rent in the amount of \$930.00 on September 1, 2018 and issue a monetary award in the landlord's favour for that amount.

I accept the landlord's evidence that the tenant left furniture and materials in the rental suite and they incurred costs for cleaning and maintenance. The landlord provided documentary evidence in the form of receipts, invoices and photographs of the suite. I accept the landlord's figure that the total cost of the work done in the suite was \$851.30.

The tenancy agreement submitted into evidence contains a liquidated damage clause of \$200.00 in the event that the fixed term tenancy agreement is ended earlier by the tenant. I find that this is an effective term providing a reasonable estimate of the costs of re-renting the suite. As such, I find that the landlord is entitled to recover the \$200.00 liquidated damage from the tenant.

As the landlord's application is successful the landlord is entitled to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$455.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,626.30 on the following terms:

Item	Amount
Unpaid Rent September 2018	\$930.00
Cleaning and Replacement Costs	\$851.30
Liquidated Damage	\$200.00
Filing Fee	\$100.00
Less Security Deposit	-\$455.00
TOTAL	\$1,626.30

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: January 11, 2019

Residential Tenancy Branch