



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (“Application”) by the Landlord seeking remedy under the *Residential Tenancy Act* (“Act”). The Landlord applied for a monetary order for damage or compensation under the *Act*, and to recover the cost of the filing fee.

The Landlord, his Agent, and the Tenants attended the teleconference hearing and gave affirmed testimony. During the hearing, the Parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

In the hearing, both Parties confirmed that they had received the documentary evidence from the other Party, and that they had had the opportunity to review that evidence prior to the hearing. As a result, I find there were no issues raised regarding service of the documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the Parties confirmed their email addresses and their understanding that the decision would be emailed to both Parties, and that any applicable orders would be emailed to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted into evidence. A fixed-term tenancy began on February 14, 2018, and was scheduled to end on February 15, 2019, and

then revert to a month to month tenancy. The monthly rent owing in this tenancy was \$2,600.00, and the Tenants paid a security deposit of \$1,300.00 at the start of the tenancy.

Some of the Parties' issues were subject to a previous decision of another Arbitrator in a decision dated September 17, 2018 (the "Previous Decision"). In the Previous Decision, the Arbitrator addressed the Tenants' application for compensation for damage or loss under the *Act*, regulation, and the tenancy agreement, and to recover the filing fee. The Arbitrator described the situation, which is relevant to my decision, as follows:

The Tenant said they moved into the rental unit on February 14, 2018 and she saw some silverfish in the master bedroom. As the month [went] by the insect infestation got worse and so on March 1, 2018 the Tenants phoned the Landlord and told him about the insect issue. The Tenant said the Landlord acted immediately and the Pest Control company came to the rental unit on March 2, 2018. The Pest Control company said the insects were silverfish and the agent sprayed the rental unit. As well the Pest Control agent said the unit should be empty as a result of the spray for at least 7 hours for adults and 24 hours for children and nursing mothers. Further the Tenant said the Pest Control agent said they could come back in 10 days if the insect problem was not resolved. The Tenant said she was very concerned about the insect problem and the pesticide spray for herself and her family. As a result she decided to look for a new place to rent and she emailed the Landlord that she would be moving out because of the insect problem. The Tenant added that the Landlord did offer the Tenants \$200.00 for alternative accommodations for the night of March 2, 2018 because of the spray. The Tenant said they stayed with family so they did not accept the Landlord's offer.

The Tenant said she believed the house was uninhabitable from March 2, 2018 to when they moved out on March 21, 2018. The Tenant said they stayed in the rental unit 4 nights in March while they packed up their belongings. The Tenant continued to say they prepared a Mutual Agreement to End Tenancy for the Landlord to sign but the Landlord did not sign it. The Tenant said this was an oversight because the situation was very stressful for her.

The Tenant continued to say that they moved out on March 21, 2018, she gave the Landlord her forwarding address in writing that day and the Landlord returned their security deposit.

In the Analysis portion of the Previous Decision, the Arbitrator found the following:

In all tenancies things happen and it is the responsibility of both the Tenant and the Landlord to communicate and work together to resolve the issues. The insect issue in this tenancy is regrettable but it has not been proven to be either

the Landlord or the Tenant's fault. Therefore both parties have a responsibility to mitigate the issue.

Based on the testimony and submitted evidence I find the Landlord acted appropriately and [responsibly] to the Tenant's concerns. Further there is no evidence the Landlord knew about the insect issue prior to the tenancy. In fact it is possible that the insects came with the Tenants. Consequently I find the Tenant has not proven the Landlord has violated the Act, regulations or tenancy agreement in any way. I find the Landlord has complied with the Act, regulations and tenancy agreement.

Secondly, the Tenants have not provided any corroborative evidence that the rental unit was uninhabitable after the Pest Control company completed the work. Consequently I find the Tenant have not proven a loss or damage to them.

Further the Tenants have not shown any action to mitigate their loss. For example working with the Landlord to resolve the insect issue so the tenancy could continue as stated in the fixed term tenancy agreement.

For these reasons the Tenants' application does not have merit, I dismiss the Tenants' application without leave to reapply due to a lack of evidence to prove the Landlord violated the Act, regulations or tenancy agreement and that the Tenants had a loss or damage that requires compensation.

These findings in the Previous Decision are consistent with the documentary and oral evidence that was before me in this hearing.

Landlord's claim

The Landlord claimed a total amount of \$1,126.67, before the filing fee, which the Landlord set out in his evidence, as follows:

ITEM DESCRIPTION		AMOUNT
1. 10 days in March @ \$83.87/day	Rental income loss	\$838.70
2. 13 days in April @ \$86.67/day	Rental income loss	\$1,126.67
3. March 22 to April 13, 2018	Total Loss	\$1,965.37
4. Prepaid March retained	Offset against total	\$838.70
5. Outstanding balance	Resulting Loss	\$1,126.67
TOTAL		\$1,126.67

Given the Landlord's calculations, the documentary evidence, and the Parties'

submissions in the oral hearing, I find that the Tenants paid \$2,600.00 in rent for March 2018, but they paid no rent for April 2018. I find that in item 2 above, the Landlord seeks to obtain an order to reimburse him for the loss of 13 days of rent in April 2018, when the rental unit was vacant and not earning rental income. The Landlord's calculations in item two amount to $\$2,600.00/30 \text{ days} = \86.67 per day in April. The rental unit was vacant in April 2018 for 13 days $\times \$86.67 = \$1,126.71$. Due to rounding the daily amount owing in April, the Landlord calculated that he is owed \$1,126.67 by the Tenants. The other amounts noted above are set off against each other and amount to nil, so the total amount the Landlord says is owing is \$1,126.67.

The Agent said that the Tenants' text communications with the Landlord in early March 2018, which were included in the evidence before me, indicated that they intended to move out of the rental unit. As a result, the Landlord advertised the rental unit in a local rental website on March 15, 2018, seeking to decrease his potential loss of rental income. The Agent said the Landlord had a showing of the rental unit on March 17, 2018 and was able to re-rent it as of April 14, 2018.

The Tenants said the Landlord filled out three copies of a Mutual Agreement to End the Tenancy form (the "Mutual Agreement"), but that he did not sign it. The Tenant, EA, suggested that the failure of the Landlord to sign the Mutual Agreement was an oversight and that his having filled out the forms demonstrated the Landlord's intention to sign the forms.

The Tenants said the Landlord returned the security deposit, which they said means he must have thought they were ideal tenants. The Tenants also noted that the Landlord did not enforce the liquidated damages clause of the tenancy agreement, which they said also indicates the Landlord's opinion regarding the appropriateness of the Tenants' actions.

The Agent said the Tenants gave the Landlord less than 7 days' notice of their intention to vacate the rental unit. She said the Landlord tried to contact the Tenants, but that they "simply ignored him".

The Agent said the Landlord honoured his obligation to mitigate the damages caused by the Tenants' early end of the tenancy. She said the Landlord did not have the authority to retain the security deposit, so he followed his obligations under the *Act* in this regard; the Agent said this did not indicate anything about his view of the Tenants. The Agent said that in the Previous Decision the Landlord was not found to have breached the tenancy agreement, the *Act* or his duty to mitigate his damages.

The Agent said the Tenants gave insufficient notice to end the tenancy, despite the Landlord having quickly dealt with the insect problem that arose in the rental unit. The Agent said the rental unit was ready for occupancy on April 1, 2018, but that the Landlord did not have enough time to find someone to rent it as of that date.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party who applies for monetary compensation against another party has the burden of proving their claim; the burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. As such, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord.

Section 45 of the *Act* provides that normally, a tenant can only end a fixed term tenancy at the end of the fixed term. However, when a tenant advises the landlord that they believe the landlord is in breach of a material term and the landlord fails to correct the breach within a reasonable time, the tenant may end the tenancy earlier than the fixed term.

Based on all of the documentary and oral evidence before me, I find I agree with the Arbitrator of the Previous Decision, that the Landlord “acted appropriately” and responsibly in this situation; the Landlord did not fail to comply with a material term of the tenancy agreement and he did not sign a Mutual Agreement to end the tenancy early. In contrast, I find that the Tenants breached the *Act* by ending the tenancy in contravention of the terms of the tenancy agreement and section 45 of the *Act*. I find that the Landlord proved that the Tenants violated the *Act* and tenancy agreement by vacating the rental unit prior to the legal end of the tenancy.

Further, I find the Tenants' behavior in this regard resulted in the Landlord incurring a loss of rental income for the first 13 days of April 2018. The Landlord established the value of this loss as \$1,126.67, which value the Tenants did not dispute.

Finally, I find that in addition to resolving the Tenants' concern about the insects in the rental unit as quickly and efficiently, as possible, the Landlord tried to mitigate his rental income loss by seeking another tenant for the rental unit, as soon as possible in this set of circumstances. Accordingly, I find the Landlord met the burden of proof in establishing a loss in the amount of **\$1,126.67** for this portion of his claim.

As the Landlord's claim had merit, I allow the Landlord to recover the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Conclusion

Based on the evidence before me, on a balance of probabilities, I find that the Landlord established a total monetary claim of **\$1,226.67**. The Landlord is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,226.67.

Should the Landlord require enforcement of the monetary order, he must first serve the Tenants with it, and then the monetary order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that court.

The decision will be emailed to the Parties, as noted above, and the monetary order will be emailed to the Landlord only for service on the Tenants, as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2019

Residential Tenancy Branch