



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S

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 monetary loss or money owed 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 application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. Both parties confirmed that they had no issue with the admittance of all documentary evidence, and that they were ready to proceed with the scheduled hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses associated with this tenancy?

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

Background and Evidence

This fixed-term tenancy began on January 15, 2018, and was to end on January 31, 2019. Monthly rent was set at \$1,800.00, payable on first of the month. The landlord collected a security deposit of \$900.00, which the landlord still holds. The tenants moved out on April 30, 2018, before the end of this tenancy. The tenants' forwarding address was confirmed at previous scheduled hearing on July 9, 2018. The landlord filed their application on August 2, 2018.

The landlord is requesting monetary compensation as follows:

May 2018 Loss of Rental Income	\$1,800.00
Laminate flooring for bedroom #2	875.00
Laminate flooring – tv room	775.00
Replacement of bathroom sink	325.00
Repair of damaged drywall	125.00
Cleaning	150.00
Total Monetary Award Requested	\$4,050.00

Both parties confirmed that no move-in or move-out inspection report was completed for this tenancy, although a walk through inspection was done together at the beginning and end of the tenancy.

The rental home is a bungalow built in 1958. Two major renovations were completed, with the most recent one done 4.5 years ago. The home was re-painted at that time.

The tenants do not dispute that they moved out before the end of the fixed-term tenancy. The landlord testified that he suffered a financial loss for the month of May 2018. The landlord testified that he attempted to mitigate the tenants' exposure to losses by advertising the home right away, but he was unable to re-rent the home until June 1, 2018 for \$2,000.00 per month due to the difficulty in showing the home.

The landlord also testified that the tenants left the home in severely damaged condition, and included in his documentary evidence estimates for repairs to the home. The damages include scratched laminate floors, damage to the drywall, and bathroom sink. The landlord testified that the tenants also failed to properly clean the home.

The tenants admit to chipping the sink, and scratching the floor, but only agree to the cost of repairs and not the replacement of these items. The tenants dispute that they

damaged the drywall. The tenants also dispute the landlord's claim that they failed to properly clean the home, stating that they had vacuumed and swept the home. The tenants admit that they left dishes in the dishwasher as they did not have detergent to clean the dishes.

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 landlord 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 landlord 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 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,*
- (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.*

I find that it was undisputed that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants 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 tenants in regards to this tenancy. The tenants moved out earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to the losses claimed.

The evidence of the landlord is that they were able to re-rent the home, but lost a month of rental income despite their efforts to post the home for rent as soon as they could. I find that the landlord suffered this loss due to the tenants' failure to end this fixed-term tenancy in a manner required by the *Act*. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's application for a monetary order in the amount of \$1,800.00 for loss of rental income for the month of May 2018.

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 condition except for reasonable wear and tear. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. Although there was a walk through done at the beginning and end of the tenancy, the landlord did not dispute that inspection reports were not completed and provided to the tenants.

Although the tenants are required to leave the rental unit in reasonably clean and undamaged condition, the purpose of the move-in and move-out inspection reports is to provide both parties with the opportunity to clearly identify and address damage that took place during the specific tenancy. In the absence of these reports, I have no way of ascertaining what damages occurred during this tenancy beyond what was agreed to by the tenants.

As the tenants admit to damaging the sink and laminate flooring, I find that the landlord is entitled to some compensation for this damage. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the damages claimed by the landlord. As per this policy, the useful life a sink is 20 years. At the end of the tenancy the sink had approximately 15.5 years of useful life left. The approximate prorated value of the remainder of the useful life of sink is \$251.88 ($\$325/240 \times 186$), which I find to be reasonable compensation for the damage.

As per the policy, the useful life of laminate flooring is 20 years. At the end of the tenancy the laminate had approximately 15.5 years of useful life left. The approximate prorated value of the remainder of the useful life of the flooring is \$1,278.75 ($\$1,650.00/240 \times 186$). I have taken in consideration the tenants' concerns about whether the flooring could have been repaired rather than replaced. I am not satisfied that the landlord provided sufficient evidence to support whether they had mitigate the tenants' exposure to losses associated with repairing the flooring, and on this basis I allow partial compensation in the amount of \$639.38, half of the value after the useful life is applied.

The tenants admitted to leaving dishes in the dishwasher without properly cleaning them. I am satisfied that the landlord had provided sufficient evidence to support that the tenants have failed to properly clean the home at the end of the tenancy, and on this basis I allow the landlord's monetary claim of \$150.00 for cleaning.

As the tenants disputed the damage to the drywall, and as stated earlier, in the absence of move in and move out inspection reports I am unable ascertain the damage caused by the tenants during this tenancy. On this basis, I dismiss this portion of the landlord's claim without leave to reapply.

I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$2,041.26 in the landlord's favour as set out in the table below.

May 2018 Loss of Rental Income	\$1,800.00
Laminate flooring	639.38
Replacement of bathroom sink	251.88
Cleaning	150.00
Filing Fee	100.00
Less Security Deposit Held by Landlord	-900.00
Total Monetary Award	\$2,041.26

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 remaining portion of the landlord's 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: January 11, 2019

Residential Tenancy Branch