



Dispute Resolution Services

Page: 1

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 unpaid utilities, liquidated damages, loss of rent from early termination of fixed term tenancy, damages to the rental unit, and reimbursement of filing fees.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution and the landlord's evidence. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for reimbursement of filing fees pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The parties agreed that they had a fixed term tenancy starting March 1, 2017 and ending February 28, 2018. The rent was \$933.00 per month and the tenant paid a security deposit of \$437.50.

The parties had a previous dispute resolution hearing wherein the landlord was ordered to return the security deposit to tenant. The landlord's cross-application for a monetary award for

damages to the rental unit was dismissed with leave to apply because of improper service. The landlord has re-filed that claim herein. The landlord is seeking \$5,006.90.

The tenancy agreement had a liquidated damages clause which stated that the tenant was liable to pay liquidated damages in the amount of \$933.00 to cover the administrative expenses of re-renting the rental unit if the tenant ended the tenancy early. The liquidated damages provision states that this provision is not a penalty and this provision does not preclude the recovery of other damages resulting from the tenant's breach of the tenancy agreement. Specifically, the tenancy agreement states:

If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may, at landlord's option, treat this Tenancy Agreement as being at an end, in such an event, the sum of \$933.00 shall be paid by the tenant to landlord as liquidated damages, and not as penalty, to cover the administrative costs of re-renting the said premises. The landlord and tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy in law or equity, including, but not limited to, damages to the premises and damage as a result of lost income due to the tenant's breach of the terms of this Agreement.

The landlord testified that the liquidated damages provision was a reasonable estimate of the expenses of finding a new tenant. The landlord testified that the expenses involved in finding another tenant could be high because he is often in Italy.

The landlord testified that he was levied with a \$75.00 contamination fee from the waste disposal service because the tenant's partner improperly disposed drywall waste in the property dumpster. The landlord provided an invoice from the waste disposal company dated October 1, 2017 showing the assessment. The landlord testified that the tenant's partner is a drywall contractor and he disposed of drywall materials in the dumpster. However, the landlord admitted that he did not witness the tenant's partner disposing of construction supplies in the dumpster. The tenant denied this allegation and she testified that other tenants in the property also used the dumpster.

The landlord testified that the tenant told him on November 7, 2017 that she was ending the tenancy on December 31, 2017. However, the landlord testified that the tenant actually moved out on December 23, 2017.

The landlord testified that the tenant has not paid her share of water utility bills. The landlord submitted a water bill invoice from billing period August 30, 2017 to December 20, 2017 showing a balance of \$842.40. The addendum to the tenancy agreement states that "Tenant agrees to share water bill equally with all other tenants in the building." The landlord testified that tenant agreed to pay a share of the total water bill based on the number of other tenants residing in the property in the other rental units. The landlord testified that there were ten

tenants in the property at that time and that the tenant had two occupants in her rental unit, the tenant and her partner. The landlord therefore claimed that the tenant was responsible for 20% of the water bill (2 occupants in the tenants unit divided 10 occupants in the property). The tenant testified that she was the only resident in her rental unit and her partner was only a guest.

The landlord also requested a pro rata contribution from the tenant for water bill expenses from December 21, 2017 to December 31, 2017. The landlord did not provide a water utility invoice for that time period.

The parties agreed they completed a condition inspection report of the unit at the start of the tenancy. The tenant testified she did not receive a copy of this report.

The landlord testified that he met the tenant at the rental unit to conduct the walk through at the end of the tenancy but the tenant had furniture in the rental unit. The landlord testified that he refused to conduct the condition inspection until the tenant removed her possessions because he could not see the condition of the rental unit beneath her furniture. The landlord testified that he subsequently met the tenant in the evening of December 23, 2017 to perform the walkthrough and complete the condition inspection report on move out. The landlord testified that it was difficult to see the condition of the property at that time of the evening without natural lighting. However, the landlord testified that the tenant insisted on scheduling the walk through in the evening.

The parties completed a condition inspection report on move out on December 23, 2017. On the move out condition inspection report, the landlord noted that the stove needed to be cleaned and a floor tile needed to be replaced. The tenant wrote that the oven was only dirty under the burners and the oven door marks would not come off. The tenant also wrote on the report that one floor tile was 'broken/gouged' when she moved in.

The landlord testified that the tenant broke two kitchen tiles. The landlord presented photographs showing the kitchen tiles. The photographs showed what appeared to be a crack in one kitchen tile. I was unable to determine whether the adjacent tile was also cracked from the photograph provided. The tenant testified that only one tile was cracked and that crack was there when she moved into the rental unit.

The landlord provided an invoice from a contractor for \$735.00 to replace the kitchen tiles. The invoice stated that this tile pattern was no longer available so the entire floor needed to be replaced. The estimate did not provide a breakdown of the labour and supplies costs.

The landlord testified that there were large scratches in the hardwood floors. The landlord testified that he did not note the scratches in the condition inspection report because the walk through was conducted in the evening and it was difficult to see the scratches without natural light. The landlord testified that he noticed the scratches the following day. The landlord

provided multiple photographs of the flooring which appeared to show one large scratch in the hardwood floors.

The landlord also provided an estimate from the contractor for \$840.00 to refinish the hardwood floors. The estimate for the wood flooring did not provide a breakdown of the labour and supplies costs.

The landlord testified that the tenant did not arrange to have the carpets steam cleaned on move out. The landlord noted the addendum in the tenancy agreement had a provision that states that "Tenant agrees to have carpet cleaned by truck-mounted cleaner on moving out day." The landlord provided photographs over the carpet showing the impressions in the carpet from the tenant's furniture. The landlord testified that, because the tenant did not steam clean the carpets, he had the carpets steamed cleaned by a professional service at a cost of \$103.95. The landlord provided a bank statement showing the payment for the steam cleaning. The tenant testified that she steam cleaned the carpets herself with a steam cleaning machine she borrowed from a friend.

The landlord also testified that the rental unit was left in a dirty condition. Specifically, the landlord testified that the oven needed extensive cleaning. The landlord provided photographs showing grime under the stove burners and under the refrigerator. The landlord presented a cancelled cheque for \$85.00 for cleaning services. The tenant testified that she cleaned the oven and the stove needed to be disassembled to access the grime which the landlord complained of.

The landlord testified that he tried to rent the property out after the tenant ended her tenancy. The landlord testified that he listed the rental unit on online classified services. However, the landlord testified that he was unable to find another tenant until March 1, 2018.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Liquidated Damages

The tenancy agreement provided for liquidated damages of \$933.00 for administrative expenses relating to the early termination of the tenancy.

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

In this matter, I find that \$933.00 is a reasonable pre-estimate of the cost of re-renting the property and I do not find that this provision is a penalty. I find it is reasonable for the parties to pre-estimate significant costs for re-renting property when the landlord is frequently out of the country. Accordingly, I find that the liquidated damages clause is valid.

I find that the tenant has ended the tenancy early. Accordingly, I award the landlord \$933.00 in liquidated damages.

Waste Disposal Fee

I am not satisfied that the landlord has provided sufficient evidence to establish that the tenant's guests were responsible for disposing of the drywall in the dumpster. The landlord did not produce any witnesses that saw the tenant's guest use the dumpster improperly. Furthermore, both parties testified that numerous people lived at the property had access to the dumpster. Accordingly, I dismiss the landlord's request for reimbursement of the waste disposal fee.

Water Utility Bill

The tenancy agreement states that the tenant is responsible for her share of the water bill. I am satisfied that a total of \$842.40 in water bill expenses were incurred at the property from August 1, 2017 to December 21, 2017 based on the water utility invoice which was presented. The

landlord calculated the tenant's share of the water bill based on the tenant's partner residing with the tenant at the rental unit. However, the tenant denied this and she testified that her partner did not reside at the rental unit. Since the tenancy agreement only names the tenant as the resident in the rental unit, I will calculate the tenant's share of the water utility bill based on the tenant being the only occupant of the rental unit. Based on the landlord's testimony that eight other people resided in the building at that time, other than the tenant, I find that the tenant is responsible for 1/9 of the water utility bill, being \$93.60.

I deny the landlord's request for reimbursement of the water bill for the period of December 21, 2017 to December 31, 2017. The parties agreed that the tenant vacated the property on December 23, 2017. I find that the tenant's share of the water utility bill from December 21, 2017 to December 23, 2017 would be a negligible amount. Furthermore, the landlord did not provide an invoice for the water expense for that time period.

Floor Tiles Repair

The landlord testified that the tenant broke two kitchen floor tiles. However, from the photographs provided by the landlord, I could only see one kitchen tile that was broken. The tenant testified that this tile was already broken when she moved in to the rental unit.

Residential Tenancy Regulation section 21 provides that "...a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection." Since there was no notation of a broken tile on the condition inspection move in report, I find that the kitchen tile did break during the tenancy.

However, I am not satisfied that the landlord exercised reasonable mitigation of his losses as required by section 7(2) of the *Act* by replacing the entire kitchen floor to repair a single tile. The landlord did not provide any evidence of any attempt to find a similar replacement tile after the contractor stated that this tile was no longer available. I award the landlord a nominal amount of \$100.00 for repairs to the floor tiles.

Wood Floors Repair

There was no mention of the wood floor being damaged in the condition inspection report. *Residential Tenancy Regulation* section 21 provides that "...a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection." I find that the lack of any reference to the floor being damaged in the condition inspection report is evidence that the floor was not damaged at the end of the tenancy. The floor could have been damaged after the tenant vacated the rental unit.

The landlord testified that he did not notice the scratch in the evening when the inspection took place. However, the landlord did not provide an adequate explanation why he could see the scratch with lights turned on.

I am not satisfied that the landlord has provided sufficient evidence to prove on the balance of probabilities that the tenant caused this damage to the floor. Accordingly, I dismiss the landlord's request for reimbursement of repair costs for the wood flooring.

Carpet Steam Cleaning

The tenancy agreement stated the tenant was responsible for steam cleaning the carpets on move out. I find that the photographs showing the impressions of the tenant's furniture in the carpet shows that the carpets were not steam cleaned in accordance with the carpet. Furthermore, I find the carpet steam cleaning costing submitted by the landlord to be reasonable. Accordingly, I grant the landlord reimbursement of \$103.95 for steam cleaning costs.

Claim for Cleaning Costs

I am not satisfied that the landlord has sustained any compensable damages for cleaning expenses. Section 37(2) of the *Act* only requires that the rental unit be left in a reasonably clean condition. I find that the photographs submitted by the landlord do not show a need for significant cleaning services. The photographs do show grime under the stove burners but I do not find that tenants are responsible for such invasive cleaning. I dismiss the landlord's request for compensation for cleaning costs.

Claim for Loss of Rent from Early End of Tenancy

The landlord also seeks compensation for the loss of rent resulting from the tenant's early termination of the tenancy agreement. I find that the tenant notified the landlord on November 7, 2017 that she was ending the tenancy on December 31, 2017 even though the parties had a fixed term tenancy with a stated end date of February 28, 2018. Section 45(2) of the *Act* states that a tenant cannot end a fixed tenancy before the stated end date of the tenancy agreement. Accordingly, I find that the tenant breached the tenancy agreement by ending the tenancy early. Furthermore, I am satisfied that landlord has suffered a loss of rent from the tenant's breach of the tenancy agreement by having the rental unit vacant in January and February 2018.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the

other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable** to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by 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 am not satisfied that the landlord has provided sufficient evidence to establish that he has taken reasonable measures to mitigate his loss. The tenant gave landlord notice on November 7, 2017 that she was ending the tenancy on December 31, 2017. This notice provided the landlord seven weeks to find a new tenant. The landlord said he was unable to secure a new tenant because tenants were not interested in moving over the holidays. I do not find this explanation convincing. Furthermore, the landlord has not provided any copies of the classified advertisements he posted to market the property.

Accordingly, I am not satisfied that the landlord took reasonable measures to mitigate his loss and I dismiss the landlord’s request for compensation for loss of rent based upon the tenant’s early termination of the tenancy agreement.

Since the landlord has been generally successful in this application, I grant the landlord reimbursement of \$100.00 of the filing fee for this application pursuant to section 72.

The landlord has also requested reimbursement for the filing fee for his previous dispute resolution application which was dismissed with leave to reapply. The decision in the previous hearing stated that his application was dismissed for improper service on the tenant. The landlord argued in this matter that he actually served the tenant properly in the previous matter. However, I find that the determination of the invalidity of the landlord’s service was already decided in the previous hearing and I will not re-hear that issue. Accordingly, I accept the previous arbitration decision that held that the landlord did not serve the tenant properly in the previous matter. Since the landlord did not serve the tenant properly, I find that the landlord is not entitled to a reimbursement of the filing fee from the previous dispute application.

Accordingly, I grant the landlord a monetary order of \$1,330.55 calculated as follows.

<u>Item</u>	<u>Amount</u>
Liquidated damages	\$933.00
Water utility bill	\$93.60
Flooring tile repair	\$100.00
Carpet cleaning	\$103.95
Reimbursement of filing fees	\$100.00
Total award to the landlord	\$1,330.55

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,330.55**.

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: February 27, 2019

Residential Tenancy Branch