



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, monetary compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

The Landlord and Tenant were present for the duration of the teleconference hearing as was an advocate for the Tenant who did not present any testimony or evidence. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of the Tenant’s evidence package.

Although the Landlord brought up possible late service of the Tenant’s evidence, it was confirmed that it was served to the Landlord two weeks prior to the hearing, which is within the 7 days required as stated in Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*. Neither party brought up any additional issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

On the Application for Dispute Resolution the Landlord claimed a total of \$1,136.00. However, the Landlord submitted a Monetary Order Worksheet dated January 1, 2019 outlining the monetary claims in the amount of \$2,541.00. As the Tenant confirmed receipt of this Monetary Order Worksheet, I accept that the Tenant was aware of the

new monetary amount claimed by the Landlord, despite it changing from the initial application. As such, I accept the new amount claimed by the Landlord and this decision will address the claims as noted on the Monetary Order Worksheet dated January 1, 2019. The Application for Dispute Resolution was amended pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on July 1, 2018 and ended at the end of October 2018. Monthly rent of \$1,095.00 was due on the first day of each month and a security deposit of \$547.50 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The tenancy agreement was for a fixed term, set to end on February 1, 2019.

The Landlord has claimed a total of \$2,541.00 as noted on a Monetary Order Worksheet. This includes two months of rent for November and December 2018 in the amount of \$1,095.00 per month. The Landlord testified that she received email notice from the Tenant on September 27, 2018 that she would be moving out by November 1, 2018, prior to the end of the fixed term. The email was submitted as evidence and the Tenant states that she will likely move out by mid-October but will let the Landlord know the exact date.

The Landlord submitted email communication with the Tenant dated September 27 and September 28, 2018. In the emails the Landlord stated that they are willing to work with the Tenant to come to a compromise, but that otherwise the Tenant will be responsible for the remainder of the fixed term.

The Tenant responded that she wished to be released from the contract as she is unable to continue residing there or paying the rent for the remainder of the fixed term. In one email dated September 28, 2018, the Landlord notes that she is legally protected and doesn't have to do anything given that the Tenant remains responsible for the remainder of the term.

The Tenant testified that she had a medical condition that was making it difficult to navigate the stairs to the rental unit. She stated that she had not realized that her condition would get worse, so she apologized when she provided notice to the Landlord as it had been her intent to stay in the rental unit for the remainder of the fixed term. The Tenant submitted medical information from a doctor which outlines her medical condition and states that stairs may exacerbate her symptoms.

The Landlord stated that she had assumed that the Tenant would remain responsible for rent for the remainder of the fixed term tenancy. She cashed the post-dated cheques for November and December 2018 and both were returned by the bank. The Landlord submitted the returned cheques as evidence, as well as bank statements showing that the cheques were returned due to stop payment.

The Landlord stated that she made attempts to re-rent the unit but was unable to find a new tenant until January 1, 2019. The Landlord testified that she did not advertise the rental unit in October 2018 as at that time she thought that the Tenant would be paying rent as due on November 1, 2018. However, as this did not occur, the Landlord began advertising through a posting board at her work and then posted an advertisement in the local newspaper beginning in November 2018.

The Landlord claimed compensation in the amount of \$41.00 for the cost of advertising the rental unit in the newspaper. The Landlord submitted three invoices in the amount of \$20.50 each. An invoice dated November 9, 2018 states that the advertisement would be in the paper from November 2 to November 9, 2018. An invoice dated November 23, 2018 states that the advertisement will run from November 18 to November 23, 2018. The third invoice, dated December 21, 2018 was for the advertisement in the newspaper from December 14 to December 21, 2018. The wording of the

advertisement was included on the invoices and confirms that the Landlord was advertising the rental unit for the same monthly amount that the Tenant was paying.

The Tenant stated that she watched in the local newspaper every week and that the Landlord did not advertise the rental unit in September or October 2018. She stated that she realized she may still be responsible for the rent, but as the Landlord had not advertised she assumed that new tenants had been found.

The Landlord also claimed \$65.00 for cleaning the windows and window tracks and \$25.00 for cleaning the deck. The Landlord stated that she completed the move-out inspection on her own after sending 3 requests to the Tenant with no response. The Landlord stated that the Tenant had many plants on the deck and therefore cleaning was required after the Tenant moved, due to the dirt left behind.

The Landlord submitted a Notice of Final Inspection in which she scheduled a move-out inspection with the Tenant on November 14, 2018 at 11:00 am. The Landlord also submitted the Condition Inspection Report which was signed by both parties on June 26, 2018 for the move-in inspection. The move-out inspection was not filled out.

The Landlord also claimed \$150.00 for the cost of moving items back into the rental unit that had been moved and stored at the start of the tenancy. As this was a furnished unit, the Landlord stated that they accommodated the Tenant by moving furniture and kitchen items out of the unit as the Tenant wanted to use her own items.

The Landlord stated that the Tenant's family members moved some items back into the rental unit but that there were still several boxes in the garage that took about 3 hours to complete, in addition to the travel time of the person completing the work.

The Landlord submitted into evidence a note dated November 5, 2018 in which the writer states that they were hired to clean, restock the kitchen cabinets, move furniture back into the rental unit, sweep the deck and clean the windows inside and out, including the window tracks. The note states that the total fee for this work would be \$240.00 - \$275.00.

The Tenant stated that she used her own kitchen items during the tenancy, but had not been aware of the additional items stored in the garage due to the rental unit being empty when she moved in. The Tenant further testified that they cleaned some windows when they moved out, but that others could not be reached.

The Tenant noted that the windows were not clean when she moved in, and any dirt present was from the start of the tenancy as well as normal dirt from use. The Condition Inspection Report at move-in notes that the windows were in good condition.

The Tenant agreed that she participated in a move-in inspection and that she did not participate in the move-out inspection as she did not feel comfortable to do so.

The Tenant also testified that there was no dirt beneath the plants on the deck due to the pots being raised on wheels and therefore away from the surface of the deck.

The Landlord submitted photos of the items to be moved from the garage back into the rental unit, as well as a photo of the deck and photos of the windows. The photos of the deck and windows are not clear and difficult to make out the details.

The Tenant stated that she waived her right to the security deposit to cover the cost of the Landlord moving belongings back into the rental unit. The Landlord submitted an email from the Tenant dated November 1, 2018 in which the Tenant states that she was unable to return to the rental unit to move the items back into the rental unit, so instead she waived her right to the security deposit to cover the cost of hiring someone to complete the work.

Lastly, the Landlord claimed for hydro costs for the months of November and December 2018. The Landlord stated that the heat was kept on low during these two months and that this cost \$35.00 per month for a total of \$70.00. She stated that the Tenant was responsible for the hydro costs during the tenancy.

Analysis

The Landlord is claiming compensation for two months of rent due to the Tenant breaching their fixed term tenancy agreement. I accept the evidence before me that demonstrates that this was a fixed term agreement that began on July 1, 2018 and was set to end on February 1, 2019.

Although the Tenant provided notice in September 2018 that she would be ending the tenancy at the end of October 2018, I refer to Section 45(2)(b) of the *Act* which states that a tenant cannot provide notice to end the tenancy earlier than the end of tenancy date in the fixed term agreement.

The Tenant provided testimony and evidence as to a medical condition that led to her decision to move out and find a place with no stairs. Section 45.1 of the *Act* provides the circumstances in which a tenant may end a fixed-term tenancy early other than what is stated in Section 45 which includes fleeing family violence or entering a long-term care facility. I do not find that this applies to this situation and instead find that the Tenant breached Section 45 of the *Act* by ending the tenancy prior to the end of the fixed term.

As stated in Section 7 of the *Act*, when a party does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, they must compensate the other party for any losses that occur as a result. However, Section 7 of the *Act* also requires that a party claiming a loss takes reasonable steps to mitigate any potential losses.

As the Tenant provided notice to the Landlord in September 2018 that she would be breaking her fixed term agreement and the parties engaged in an email exchange regarding the ending of the tenancy, the Landlord was aware that the rental unit would be empty for November 1, 2018.

Although the Landlord noted that the Tenant emailed her notice instead of providing it in a written letter, I find evidence before me that the parties communicated about this notice over email, thus confirming that the Landlord received the notice despite it being sent by email. As well as the initial email sent on September 27, 2018, the Tenant sent an email on October 23, 2018 stating that she would be moving out the following weekend.

The Landlord provided testimony that she did not advertise the rental unit right away, and I accept the evidence before me that the first advertisement in the newspaper was posted on November 2, 2018, with advertisements posted throughout November and into December 2018.

Although the Landlord noted that she posted an advertisement at her place of work, there is no further information as to when this was done. Therefore, as I do not have sufficient evidence that the Landlord took reasonable steps to find a new tenant for November 2018, I find that she did not mitigate her potential losses and therefore I decline to award compensation for November 2018 rent.

Based on the email exchanges submitted as evidence, as well as the testimony of the Landlord, it seems that the Landlord was of the belief that the Tenant would be

responsible for rent for the remainder of the fixed term. Therefore, I find it likely that the Landlord did not take steps to advertise the rental unit until the Tenant's cheque for November 1, 2018 was returned.

I find that the Landlord has established that she is entitled to compensation for December 2018 rent. As the rental unit was advertised in a local newspaper beginning on November 2, 2018 for the same monthly rent that the Tenant was paying, I find that the Landlord took reasonable steps to find a new tenant for December 1, 2018 and to mitigate her losses for that month.

The Landlord claimed \$41.00 for the cost of advertising the rental unit in the newspaper. I accept the invoices submitted into evidence that establish that at least \$41.00 was paid towards advertising and find this to be a reasonable amount spent on advertising. As I find that these costs were incurred due to the Tenant breaking the fixed term tenancy agreement, the Landlord has established that she is entitled to compensation in the amount of \$41.00.

The Landlord also claimed a total of \$240.00 for cleaning the windows, cleaning the deck and moving items back into the rental unit. In an email dated November 1, 2018 the Tenant forfeited her security deposit for the cost of moving the items back into the rental unit. I find this email to be the Tenant's acceptance that the items needed to be moved back in and that there would be costs associated with this up to an amount of \$547.50; the amount of the security deposit. Therefore, I award the Landlord \$150.00 for this claim.

I also accept the testimony of the Tenant that although they cleaned the windows, that not all of them were cleaned. The Condition Inspection Report that was signed by both parties at the start of the tenancy states that the windows were in good condition and does not note any dirt. Therefore, I find the Landlord's claim for \$65.00 to be reasonable to clean the windows and window tracks at the end of the tenancy.

I also Although the Landlord claimed that the deck needed cleaning, I fail to find sufficient evidence to establish this. As noted, the photo submitted of the deck is not clear as to the condition of the deck. The Landlord stated that she completed the move-out inspection in the absence of the Tenant, however only the move-in inspection was included as evidence.

As the Tenant was not in agreement that the deck needed cleaning and in the absence of the move-out inspection or other evidence that would establish that the deck was not left reasonably clean at the end of the tenancy, I decline to award the cost of cleaning the deck to the Landlord.

Lastly, the Landlord claimed \$75.00 for hydro costs for the months of November and December 2018 due to keeping the heat on low after the Tenant moved out. However, I fail to find sufficient evidence to establish the amounts claimed by the Landlord, such as a hydro bill for these months that would show the charges.

A party claiming a loss has the onus to prove, on a balance of probabilities, that the loss resulted from the other party's breach, but also need to prove the value of the loss. Due to insufficient evidence to establish the hydro costs incurred by the Landlord during November and December 2018, I decline to award compensation.

Based on an email dated November 1, 2018, I find that the Tenant provided permission for the Landlord to retain the security deposit towards costs incurred, which was confirmed by the Tenant during the hearing. Therefore, I find that the Landlord is entitled to retain the deposit towards compensation owed, pursuant to Section 38(4) of the *Act*.

As the Landlord was partially successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

December 2018 rent	\$1,095.00
Rental advertisements	\$41.00
Window cleaning	\$65.00
Moving items into rental unit	\$150.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$547.50)</i>
Total owing to Landlord	\$903.50

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$903.50**. 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: March 13, 2019

Residential Tenancy Branch