# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROFT ST. (7 KORITE) LP
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $1,700.00 for recovery of unpaid rent under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee. The Landlord retained the security deposit, requesting that it be applied to the claim.

The Tenant, M.C., and two representatives of the Landlord, D.B., Senior Resident Manager, and an agent for the Landlord, T.K., ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the other Party's Application and/or documentary evidence within enough time to review it prior to the hearing.

Preliminary and Procedural Matters

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision letter. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The Parties provided their email addresses in the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Landlord applied to amend the Application, indicating that the monetary claim was initially stated to be $1,800.00, but that this included their claim to recover the filing fee. The Landlord changed the claim amount to $1,700.00, plus recovery of the filing fee. The Tenant did not oppose this amendment. Pursuant to section 64(3)(c) of the Act, I find that the Application is so amended.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that they signed a fixed term tenancy which started on September 1, 2018 and was to end on August 31, 2019. The Parties agreed that the monthly rent was $1,700.00, due on the first of each month. The Parties agreed that the Tenant paid a security deposit of $850.00 and no pet damage deposit.

The Landlord claims that the Tenant provided insufficient notice to end the tenancy in contravention of the Act and tenancy agreement. The Parties agreed that the Tenant gave the Landlord notice of the end of the tenancy in a letter dated November 22, 2018. In this letter, the Tenant said:

> [Tenant's name]
>
> November 22, 2018
> [rental unit address]
>
> This is to serve notice that I will be terminating my tenancy and lease to vacate the premises on the day of November 30, 2018 no later than 1:00PM. For reasons of health and safety and disagreement with the Condition Inspection Report, issues that have been clearly communicated in correspondence to site management, I am leaving this residence and terminating the lease.
>
> Please advise me of your availability, time specific, on November 30, 2018 for a moving out Condition Inspection Report to be completed by both of us.

Please respond in writing only.

Kind regards,
[Tenant's name and signature]
[the "Notice"]

In the hearing, the Tenant said the reason they gave the Notice was due to a health and safety concerns for their daughter. They spoke of and gave documentary evidence that the previous tenants in the rental unit had a rabbit, which appeared to cause the current Tenants coughing and sleeping problems. The Tenant said that they had asked the Agent if they could move to another unit; however, they said the Landlord told them that another unit was not available at that time.

The Tenant said that they wrote to the Agent about their daughter's health problem, but received no response from her.

The Agent said in the hearing that they had the rental unit professionally cleaned, including the carpets, prior to the Tenants moving in.

The Tenant said they asked to be moved to a different unit. They submitted an advertisement the Landlord had published on an internet listing site for another unit that had hardwood floors. The Tenant claims that the Landlord could have moved them into that unit to solve their daughter's health issues; the Tenant said the Landlord's failure to do this shows that the Landlord did not mitigate or minimize the problem.

The Agent said that the head office handles rental unit advertising and that a listing is not an indication of a vacant unit or of what the unit looks like. The Agent said that the advertised unit was already rented by the time the Landlord received the Tenant's Notice, regardless of what the advertisement said.

The Tenant pointed to the condition inspection report ("CIR"), which he uploaded to the RTB documents portal. The Agent confirmed that this is the version of CIR that was drafted on the move-in inspection. The Agent confirmed the Tenant's evidence that there were a number of items listed as damaged to which the Parties did not agree. As a result, the CIR was not signed by the Landlord's representative with whom the Tenant did the condition inspection. Further, the Parties agreed that the CIR was not completed on move-out.

The Tenant submitted a copy of a letter they wrote to the Landlord dated November 30,

2018, in which the Tenants requested the return of the security deposit and provided their forwarding address. The Tenant noted in this letter that the Landlord had 15 days from the date of this letter, pursuant to section 38 of the Act to either return the deposit or apply for dispute resolution. The Landlord applied for dispute resolution, claiming against the security deposit on December 7, 2018.

The Landlord said in their Application that they requested the Tenant give them proper notice, based on section 39 of the tenancy agreement. This clause provides conditions that mirror those of the Act, including the need for a tenant to give “at least one month’s written notice” to end a tenancy.

The evidence before me from the written and testimonial evidence submitted is that the Landlord was unable to re-rent the rental unit for December 2018, and therefore, did not receive any rental income for the rental unit that month.

Analysis

Section 45(2) of the Act states:

> **Tenant's notice**
>
> **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.
>
> **(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.**
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.
>
> [emphasis added]

The Tenant's Notice was inconsistent with the requirements of subsection 45(2). Further, the Tenant did not point to a material term in the tenancy agreement with which the Landlord failed to comply pursuant to section 45(3).

The Tenant said they communicated repeatedly with the Agent about their daughter's health; however, the Tenant did not provide evidence of a written notice to the Landlord requesting repairs or cleaning, and they did not apply for dispute resolution to resolve the matter with a request for emergency repairs or any other claim to resolve the situation in compliance with the Act.

Based on the evidence before me, I find the Landlord appeared willing to work with the Tenant, but they simply needed a month's notice to end the tenancy, so that they could attempt to re-rent the rental unit and not lose any rent.

I find that the Agent has established that the Tenant violated section 45 of the Act and clause 39 of the tenancy agreement by not giving the correct notice to end the tenancy. Further, the Agent established that the Landlord incurred the loss of rent in December 2018, the value of which was the amount of rent they charged for the rental unit: $1,700.00.

The Tenant made submissions regarding the Landlord's failure to comply with section 38 of the Act in not completing the outgoing CIR. Section 38(6) states that if a landlord does not comply with subsection 38(1) that they may not make a claim against the tenant's security deposit and must pay the tenant double the amount of the security deposit. However, the Landlord complied with subsection 38(1), by applying for dispute resolution within 15 days of receiving the Tenant's forwarding address.

Section 24 of the Act addresses the consequences for a tenant and a landlord if the CIR requirements are not met. I find that the Landlord failed to comply with the report requirements set out in section 23 of the Act. However, subsection 24(2) states that a landlord's right to claim against the security deposit is extinguished **for claims of damage to the rental unit**, but not for recovery of unpaid rent. The Landlord in the matter before me has claimed compensation for loss of rent, not for damage to the unit.

Based on the evidence before me, overall, I find that the Landlord is successful in establishing their claim against the Tenant. I award the Landlord $1,700.00 for lost rental income and authorize them to retain the Tenant's security deposit of $850.00, as partial recovery of this award. As the Landlord was successful in this Application, I also award them recovery of the $100.00 filing fee, for a total award of $1,800.00.

Conclusion

I find that the Landlord has established a total monetary claim in the amount of **$1,800.00** comprised of lost rental income of $1,700.00, plus recovery of the $100.00 filing fee.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $850.00 in partial satisfaction of the Landlord's monetary claim.

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance owing by the Tenants to the Landlord in the amount of **$950.00**.

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: April 29, 2019

Residential Tenancy Branch