



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-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 compensation for damages pursuant to section 67;
- A monetary order for unpaid rent pursuant to section 67;
- Authorization to retain a security deposit in satisfaction of a monetary order sought pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing represented by KC ("landlord") as did the tenants, with the tenant CC ("tenant") providing testimony. Each were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution and both parties confirmed receipt of each other's evidentiary package. All parties are found to have been duly served with all documents per sections 88 and 89 of the Act.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are referenced here.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damages to the rental unit and for loss of rental revenue?
- Can the landlord retain the security deposit?
- Can the landlord recover the filing fee?

Background and Evidence

This tenancy concerns the lower unit of a house comprising 2 rental units. A copy of the tenancy agreement was filed by the landlord. The tenancy agreement was signed

on June 8, 2018 for a fixed term tenancy commencing June 15, 2018, ending on June 30, 2019. Rent was set at \$1,250.00 per month plus 30% of the utilities, payable on the first day of each month. The tenant's security deposit of \$625.00 is being held in trust by the landlord.

On November 15, 2018, the tenants served the landlord with a Notice to End Tenancy, effective December 1, 2019 and paid the landlord's request for \$625.00 in liquidated damages. The tenant provided a copy of the receipt for \$1,011.05 representing the liquidated damages and payment for utilities to November 30, 2018.

The landlord and tenant conducted an inspection of the rental unit on December 4, 2019. Noted in part V of the report, under move-out inspection, are the following:

- Carpet clean
- Minor kitchen clean
- Check out light fixtures at entrance
- Fridge maintenance

The section on the report to record the nature and value of any deductions from the tenant's security deposit for cleaning and damages is blank. Both the parties signed the incomplete report and the tenant provided her forwarding address on the form on December 4, 2019.

The landlord claims the tenants are required to pay utilities for the rental unit after they vacated until a new tenant moves in, pursuant to the fixed term tenancy agreement. Copies of the utility bills were provided as evidence; he is seeking \$271.71 from the tenant.

The landlord cleaned the carpets and provided an invoice in the amount of \$81.90 including GST.

The landlord testified that since being served with the notice by the tenants, the landlord has been trying to re-rent the unit. New building in and around the community is bringing more vacancies to market and winter months are particularly difficult to find tenants. The landlord has advertised on numerous websites to try to locate new tenants however showings have been few and far between. Neither the landlord nor the tenant provided copies of the online advertisements as evidence. The landlord named 8-9 sites to which he uploaded his ads. He testified the advertised rent was \$1,250.00 per month, the same as what the tenants were paying. The unit is not zoned for vacation rental, so despite some interest in short term accommodations, the landlord could not rent it out as such. As of April 9, 2019, the date of this hearing, the rental unit remains vacant.

The landlord provided a tenant ledger as evidence of his claim for \$8,125.00 in unpaid rent. The ledger shows two payments of \$312.50 (total of \$625.00) for December rent,

thus \$625.00 is outstanding for December 2018. The landlord seeks additional six months of rent for the remainder of the fixed term.

The tenant provided the following testimony. She recalls seeing one advertisement for the unit and the rent was \$100.00 greater than what she paid. There are deficiencies with the rental unit, namely a non-fire rated door, lack of an oven in the rental unit, buckling floors in the kitchen, bathroom mold and an ant problem. She also noted problems with the upstairs tenant, including disruptive behaviour and an incident where the tenant barged into her unit uninvited. Despite advising the landlord of these problems, nothing was done to remediate any of these problems; the tenants did not feel safe living in the rental unit and ended the tenancy for this reason.

Analysis – Rent for remainder of the fixed term tenancy

While still living in the rental unit, the tenants did not pursue the opportunity to end the tenancy in accordance with section 45(3) by filing an application for dispute resolution to determine whether a material term of the tenancy was breached and not corrected. Instead, the tenants gave the landlord less than 30 days notice to end the tenancy.

Section 45(2) of the *Act* states:

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.

For their failure to comply with section 45(2) of the *Act*, the tenants must compensate the landlord for rent in the month of December 2018. As the ledger shows \$625.00 has already been paid, I award the landlord \$625.00.

Policy Guideline PG-3 states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule **this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.**

In this case of a fixed term tenancy, pursuant to section 45(2)(a) of the *Act*, it would be ***no earlier than one month after the date the landlord receives the notice***, or December 1, 2018.

The landlord is not entitled to rent for the remainder of the fixed term tenancy. Section 22 of the *Act* states:

A tenancy agreement must not include a term that all or part of the rent payable for the remainder of the period of the tenancy agreement becomes due and payable if a term of the tenancy agreement is breached.

The landlord is required to mitigate his loss due to the tenants' early termination of the tenancy agreement. The landlord testified he has advertised the rental unit extensively for the same rent; the tenant claims limited advertising and at a higher rent. In the absence of any documentary evidence to substantiate the content and location of the advertisements or testimony about additional action the landlord took to mitigate the loss of rental revenue, e.g., re-advertising at a lower rent, I decline to award any further compensation.

Utilities

In accordance with section 45(2)(c), the tenancy effectively ended on December 31, 2018, the day before the day in the month that rent is payable under the tenancy agreement. The landlord seeks an order for the tenants to pay utilities for a rental unit beyond December 31, 2018. There is no provision under the tenancy agreement or pursuant to the *Act* requiring a tenant to pay utilities beyond the date the tenancy agreement ended and I dismiss this portion of the landlord's claim.

Carpet Cleaning

Policy Guideline PG-1 provides guidance to landlords and tenants regarding their respective obligations during and after a tenancy:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. **Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenants were in the rental unit from mid-June to the end of November. They did not dispute the landlord's claim that they did not clean the carpets at the end of the tenancy that lasted just over 5 ½ months or that it cost the landlord \$81.90 to clean them. I award the landlord \$81.90 to clean the carpets.

Filing fee

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Security Deposit

The landlord continues to hold the tenant's security deposit in the amount of \$625.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
½ month rent for December	\$625.00
Carpet Cleaning	\$81.90
Filing Fee	\$100.00
Less security deposit	(\$625.00)
Total	\$181.90

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of \$181.90.

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: April 12, 2019

Residential Tenancy Branch