



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 compensation pursuant to section 67;
- A monetary order for damages to the rental unit pursuant to section 67;
- Authorization to retain the security deposit and pet deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution hearing package and evidence by registered mail on January 23, 2019. The landlord provided a Canada Post tracking number and receipt for the mailing,

found on the cover page of this decision. The landlord also provided in his evidence a printout of the confirmation of delivery from Canada Post indicating the package was received and signed for by the tenant on January 30, 2019. I deem the tenant served with the Application for Dispute Resolution hearing package on January 30, 2019 pursuant to section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for compensation for the tenant's breach of the tenancy agreement by ending the tenancy before the end of the fixed term?
- A monetary order for damages to the rental unit?
- Authorization to retain the security deposit and pet deposit?
- Authorization to recover the filing fee for this application from the tenant?

Background and Evidence

A copy of the tenancy agreement was provided by the landlord. This tenancy began on September 15, 2018 as a fixed term tenancy ending on September 30, 2019. The tenant paid rent in the amount of \$1,800.00 per month payable on the 1st day of each month. A security deposit in the amount of \$900.00 and a pet damage deposit of \$450.00 was collected by the landlord which he still holds. A condition inspection report was done at the commencement of the tenancy.

On November 30, 2018, the tenant advised the landlord she would be ending the tenancy on December 31, 2018. The tenant said she was moving out because the size of the rental unit is too small for her family and the noise of her children were disturbing the downstairs tenant.

The landlord immediately made arrangements to advertise for re-renting the unit but the tenant advised by email on December 3rd to stop advertising because she wished to stay. On December 9th, the tenant emailed the landlord once again to advise she would be moving out on December 31st. The landlord resumed looking for a new tenant and provided copies of online advertisements as evidence. A new tenant was secured for February 1, 2019, leaving the landlord with one month of loss of rent for January 2019.

On January 7, 2019 at 1:05 p.m., the tenant emailed the landlord to provide her forwarding address and seek a return of the security deposit and pet damage deposit.

More emails followed between the parties. When the landlord asked at 2:02 p.m. to meet for an inspection, the tenant advised at 2:04 p.m. that she now lives out of town and denied any damage to the rental unit. The landlord responded at 2:57 p.m. suggesting two different opportunities to meet and conduct a condition inspection with him. There was no response to this last email from the tenant. The landlord completed the move out inspection alone and filed for dispute resolution to retain the deposits on January 21, 2019, fourteen days after receiving the tenant's forwarding address.

On the condition inspection report, the landlord noted the following damage to the rental unit at the end of the tenancy:

Damaged edge of the wall near bedrooms (must be repatched/repainted)

Damaged paint above the heaters due to failure to properly clean and inappropriate use. Lots of dogs waste in the yard.

The landlord hired a maintenance company to fix the damage to the unit and provided a copy of the invoice as proof. The invoice lists 8 hours at \$30.00 per hour and \$65.00 in materials to fix the unit, resulting in a bill for \$317.00 including tax.

Photographs of the walls, baseboards, uncleaned oven, drawers and backyard were provided as evidence by the landlord.

Analysis

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

(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.

The tenant gave the landlord notice to end the fixed term tenancy with less than one month's notice, in breach of the tenancy agreement and section 45 of the *Act*. In this case of a fixed term tenancy, since the tenant cancelled the notice she gave on November 30 and also the notice she gave on December 3, I find the tenant gave notice to end tenancy on December 9th with an effective date of December 31st. While the landlord has provided undisputed evidence that he did try to re-rent the

unit as soon as possible, he was not able to secure a new tenant until February 1, 2019.

Residential Tenancy Policy Guideline PG 3 [Claims for Rent and Damages for Loss of Rent] indicates that the awards to the landlord in cases for loss of rent damages.

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.

The tenant's breach of the tenancy agreement and the *Act* has led to a loss of rent for the month of January for the landlord. To put the landlord in the same position as if the tenant had not breached the agreement, I award the landlord compensation in the amount of **\$1,800.00** representing lost rental revenue for the month of January 2019.

Compensation for Damage to the rental unit

Section 37(2) of the Act states:

When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Policy Guideline PG-1 provides guidance to landlords and tenants regarding their respective responsibilities. Under the heading of painting, the guideline is as follows:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The landlord provided photographs of walls and baseboards he claims the tenant damaged during this tenancy which lasted less than three months. While there is one photograph of a wall edge filled with wall filler, I am unable to determine the tenant did

any disproportionate damage beyond reasonable wear and tear as set out in section 37 of the *Act*. From the photographs, I do not see damage done to the walls due to the tenant's *'failure to clean and inappropriate use'*.

I find the landlord's claim for eight hours to repair and paint a nick to the wall as well as pick up dog waste to be disproportionately high. I likewise find the rate quoted by the landlord's contractor of \$30.00 per hour to perform this type of work to be excessive. I award the landlord a nominal amount in the amount of two hours labour, at the rate of \$15.00 per hour to compensate the landlord for fixing the wall and collecting the dog waste. I award the landlord **\$30.00**.

Filing fee

As the majority of 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 and Pet Damage Deposit

In accordance with section 38(1)(d), the landlord filed an application for dispute resolution to retain the tenant's security deposit and pet damage deposit within 15 days of receiving the tenant's forwarding address. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in the amount of \$900.00 and pet damage deposit in the amount of \$450.00 in partial satisfaction of the monetary claim.

Item	Amount
Compensation for January 2019 rent	\$1,800.00
Damage to the rental unit	\$30.00
Filing fee	\$100.00
Less Security Deposit	(\$900.00)
Less Pet Damage deposit	(\$450.00)
Total Amount awarded	\$580.00

Conclusion

I issue the landlord a monetary order in the amount of **\$580.00**. 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: April 3, 2019

Residential Tenancy Branch