



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL MNDL-S MNRL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

Both landlords attended the hearing, represented by the landlord TB ("landlord"). The tenant TP attended, representing both the tenants ("tenant"). The tenant confirmed receipt of the landlord's notice of dispute resolution proceedings and evidence. The landlord testified she did not receive the tenant's evidence. The tenant testified she sent the evidence to the landlord by email.

Preliminary Issue

The respondent (tenant) is required to serve documentary evidence to the applicant (landlord) not less than seven days before the hearing in accordance with section 88 of the *Act*, which does not include service by email. As the landlord was not served with the evidence, the tenant's documentary evidence was excluded from the hearing in accordance with Rule 6.1 of the Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fee for this application from the tenants?
- A monetary order for damages to the rental unit and authorization to retain the security deposit and pet damage deposit?
- A monetary order for unpaid rent?

Background and Evidence

The landlord provided a copy of the tenancy agreement and addendum signed on May 13, 2018 into evidence. The fixed term tenancy began on June 15, 2018 with an end date of December 15, 2018. Rent was set at \$1,800.00 per month. A security deposit of \$900.00 and a pet deposit of \$200.00 was collected, which the landlord still holds. Both parties signed the agreement on May 13, 2018. Clause 2 of the tenancy agreement (length of tenancy) provides a choice for the parties to indicate what happens at the end of the fixed term tenancy:

- i) the tenancy would continue on a month to month basis or
- ii) if the tenant must move out of the residential unit at the end of the fixed term.

If clause ii) is chosen, both the landlord and tenant must initial the boxes, which they did.

Neither of the boxes were checked to indicate what would happen at the conclusion of the fixed term tenancy, although both parties initialled the clause.

Part 4 of the addendum stipulates the following clause:

There will be no 'sub-letting' any part of the home without notifying the landlords, and a reasonable increase in rent will be applied.

The parties agree rent is due on the first day of the month although that is missing on the tenancy agreement. The landlord did not offer the tenant an opportunity to carry out a move-in or move-out condition inspection.

The landlord provided the following testimony. No move-in inspection was done because the tenants were known to her through family ties. In August of 2018, she did an inspection of the rental unit and discovered the tenants had other people living in the basement of the rental unit in violation of part 4 of the tenancy agreement addendum. The landlord advised the tenants if the other people remained, the rent would be increased by \$300.00 per month. The tenants advised they could not afford the additional rent and asked if the rent would remain \$1,800.00 if the other people left. Since she received \$1,800.00 and not \$2,100.00 the following month, the landlord assumed the others had moved out.

On November 17th, the landlord was unsure about whether the tenants planned on remaining in the rental unit beyond the end of the fixed term (December 15, 2018) and found out through text message they did not. The landlord arranged a 'pre-inspection' with the tenant for December 2 and discovered the back door unlocked, and the windows were wide open with nobody home and most of the tenant's possessions moved out. On December 2, 2018 the parties met later in the day and the landlord served the tenant with a 10 Day Notice for Unpaid Rent with an effective date of December 12, 2018.

The landlord went back to the rental unit on December 5, 2018 and changed the locks to the rental unit to protect the house as nobody was living there. At that time, she

noticed furniture she thought belonged to the occupants living in the basement. The landlord moved the remaining items from the rental unit into her garage for storage. A letter advising the tenants of the landlord's intention to change the locks was provided as evidence. At the conclusion of the tenancy, the landlord discovered a kicked in door, destroyed weather stripping and a broken piece of flooring. Photos of the door and weather stripping as well as an invoice for a new door were provided as evidence.

The landlord seeks the following monetary claims:

Item	Amount
New door (kicked in)	\$200.00
Rekeyed locks	\$61.60
Dog waste not picked up	\$200.00
Weather stripping on door	\$30.00
Broken piece of flooring	\$10.00
Subletting of basement	\$1,500.00
Hire people to clean	\$350.00
Cleaning supplies	\$92.00
Removal and storage of tenant's items	\$150.00
Unpaid rent	\$2,700.00

The landlord secured new tenants for December 15, 2018. Between the effective date on the 10 Day Notice (December 12) and the date the new tenants were moving in, the landlord hired people to clean the rental unit and purchased supplies to do so. Invoices were provided as evidence. Dog waste was picked up in the yard by the landlord before the new tenants could move in and weather stripping had to be replaced. The landlord surmises the occupants of the basement never moved out, so she seeks \$300.00 per month for five months from August to December. She also seeks \$2,700.00 as unpaid rent for the tenants' failure to advise her of their intention to move out on or before December 15th.

The tenant testified she was having difficulty in affording the rent and admits to allowing friends move into the basement to assist in paying rent. When advised by the landlord they would either have to pay greater rent or move out, the other occupants left. They were gone by the end of September 2018.

The tenant agrees rent was due on the first day of December and she did not pay it, instead allowing the landlord to retain the entire security deposit in lieu of paying rent for half a month. She acknowledges the text message exchange between the landlord and her was the first time she advised the landlord of her decision not to renew the tenancy, however she was unaware it was her responsibility to do so. She was under the impression that since she initialled on the tenancy agreement, indicating the end of the fixed term was December 15th, it would end on that date.

The landlord did not have the right to change the locks. The tenancy shouldn't have ended until December 15th as stated in the tenancy agreement. When the locks were changed on December, she was denied the opportunity to finish cleaning the rental unit or retrieve the remaining items. The doors were never left unlocked, but the windows were opened to provide fresh air when it was hot or during cleaning. At the conclusion of the tenancy, the tenant did not provide written notice of her forwarding address.

Analysis

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

- Additional Rent from August, 2018 to December 2018

The tenant has acknowledged that between August and September there were other occupants living in the basement of the rental unit in violation of the tenancy agreement. The landlord had no proof that the other occupants were there beyond the end of September, other than a suspicion based on what furniture was left behind at the end of the tenancy. For the each of the two months acknowledged by the tenant, I award the landlord the amount of \$300.00 for the sum of \$600.00.

- Lock change

Sections 31(1) and (1.1) of the *Act* clearly states a landlord may not change the locks. If the locks are changed by the landlord, the landlord must provide the tenant with new keys. As the landlord changed the locks in contravention of sections 31(1) and (1.1) of the *Act*, she is not entitled to recovery of the \$61.60. This portion of the landlord's claim is dismissed without leave to reapply.

- Hire people to clean and cleaning supplies

I accept the tenant's claim that she was effectively prevented from cleaning the rental unit at the conclusion of the tenancy due to the lock change by the landlord. As such, the tenant cannot be held responsible for the cleaning she was prevented from doing. The landlord's claim to hire people to clean and for cleaning supplies is dismissed without leave to reapply.

- Dog waste not picked up

The landlord seeks to retain the entire \$200.00 pet damage deposit for the tenant's failure to clean up waste left by the dog at the end of the tenancy. The landlord testified her partner cleaned it up. Although the task may be unpleasant, the landlord has not provided compelling evidence (point 3 of the 4 point test) that the value of the damage is \$200.00. I award nominal compensation in the amount of \$20.00.

- Removal and storage of tenant's items

The landlord moved items out of the rental unit prior to the end of the tenancy. The landlord had no legal authority to take such action. I dismiss this portion of the landlord's claim without leave to reapply.

- Unpaid Rent

The landlord seeks a month and a half payment for the tenant's failure to provide her with a full month's notice of intention to not continue with the tenancy agreement. Both the landlord and tenant initialed the "fixed term" clause of the tenancy agreement with a tenancy end date of December 15, 2018. There is no requirement for a tenant or landlord to provide any notice of the end of the tenancy when it is already stated in the tenancy agreement.

The landlord re-rented the rental unit effective December 15, 2018, suffering no loss of rent other than between December 1 and December 15, 2018.

Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] indicates when a landlord seeks damages for unpaid rent at the conclusion of a tenancy, the damages awarded are **an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement**. For the half month's loss of rent I award the landlord \$900.00.

- Weather Stripping, new door and broken flooring

The landlord provided photographic proof the door was kicked in, as well as an invoice for \$200.00 for its repair. The tenant did not dispute the kicked in door at the hearing. In accordance with section 7 of the *Act*, I award the landlord \$200.00.

The landlord did not provide any invoices to substantiate their claim for repairing the weather stripping. The photograph provided was likewise inconclusive of damage done to the weather stripping by the tenant. This claim is dismissed without leave to reapply.

The landlord did not provide photographic evidence of damage to a floor tile or proof of how she arrived at the value for the repair. This claim is dismissed without leave to reapply.

- Security Deposit and Pet Damage Deposit

The landlord did not complete a move-in condition inspection as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security

deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*;

In this case, section 38(6) requires that the tenant's security deposit of \$900.00 be doubled to \$1,800.00 and the pet damage deposit of \$200.00 be doubled to \$400.00.

The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$2,200.00 in partial satisfaction of the monetary order.

- Recovery of Filing Fee

As the landlord was successful in her claim, she is entitled to recover the \$100.00 filing fee from the tenant.

Item	Amount
Additional Rent for occupants in basement	\$600.00
Dog Waste pick up	\$20.00
Unpaid Rent for December 1 – 15, 2018	\$900.00
Filing Fee	\$100.00
Less security deposit and pet damage deposit	(\$2,200.00)
Total monetary order	(\$580.00)

Conclusion

I order that the tenants are entitled to a monetary order in the sum of \$580.00. I order that the landlord(s) pay this sum forthwith.

The tenants are provided with an Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, it 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: May 2, 2019

Residential Tenancy Branch