



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72

The landlord’s property managers and agents (“the landlord”) appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants (“the tenant”) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty-five minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord filed an Amendment to an Application for Dispute Resolution on June 7, 2019 increasing the monetary order requested from \$5,800.00 to \$7,017.45.

The landlord testified the landlord served the Notice of Hearing, Application for Dispute Resolution and Amendment to an Application for Dispute Resolution as follows:

- By registered mail sent on June 7, 2019 to each tenant individually, the tracking numbers for which are referenced on the first page of the decision and were provided in support of service; and
- By personal service on the tenant MM to whom the landlord provided two copies on March 28, 2019.

Further to sections 89 and 90, I find the landlord served the tenant on June 12, 2019, five days after mailing the documents.

Preliminary Issue - security deposit

At the outset of the hearing, the landlord provided affirmed testimony that the tenant had authorized the landlord in writing to retain the security deposit to apply to outstanding rent for the month of February 2019 as the tenant vacated the unit that month without paying the rent in full. Accordingly, the landlord withdrew the claim to apply the security deposit to any monetary award. I amended the claim accordingly.

Preliminary Issue – rent

The landlord amended the landlord's claim to reduce the amount of rent claimed from two months rent to 1.5 months' rent as the unit was vacant 1.5 months after the tenant left without notice at the end of February 2019. I amended the claim accordingly.

Summary of landlord's claim

The landlord summarized the landlord's claim as follows:

| ITEM | AMOUNT |
|--|-------------------|
| Rent – for March 2019 (\$2,900.00) and ½ April 2019 (\$1,450.00) = | \$4,350.00 |
| Repairs | \$1,077.45 |
| Cleaning | \$140.00 |
| Reimbursement of the filing fee | \$100.00 |
| Total Monetary Award Requested | \$5,667.45 |

Issue(s) to be Decided

Is the landlord entitled to the following?

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72

Background and Evidence

The landlord provided uncontradicted testimony and evidence as the tenant did not attend the hearing.

The landlord testified the month-to month tenancy began on March 1, 2018. The unit is a 3-bedroom house. The monthly rent of \$2,900.00 was payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$1,450.00 which the landlord applied to outstanding rent for February 2019 with the tenant's written authorization. The tenant vacated on February 28, 2019 without providing notice. No rent remains owing for February 2019. The landlord rented the unit again on April 15, 2019 at a reduced rent.

The landlord did not submit a copy of the tenancy agreement.

The landlord testified that a condition inspection was conducted on moving in which indicated the unit was in good condition in all relevant aspects. The parties conducted a moving out inspection on February 27, 2019. A copy of the condition inspection report was submitted as evidence which was of poor quality. The submitted report included was largely illegible except for handwritten notes on moving out. The landlord testified that the landlord and the tenant MM's signature appears both on moving in and moving out.

The landlord submitted two receipts and requested reimbursement as follows

- Cleaning - \$140.00
- Repairs - \$1,077.45

Each of the landlord's claims are discussed in turn.

Rent – for March 2019 (\$2,900.00) and ½ April 2019 (\$1,450.00)

The landlord testified that the tenant vacated the unit without notice on February 28, 2019. The landlord claimed that the landlord attempted to rent the unit as soon as the tenant left but was unable to find a suitable replacement occupant until April 15, 2019. The landlord reduced the rent asked for the property to locate a tenant shortly after the tenant vacated. The landlord submitted a copy of the subsequent tenancy agreement in support of the claim the unit was vacant until April 15, 2019.

The landlord listed the websites on which the property was advertised and testified to using all reasonable efforts to find a new tenant. The landlord submitted copies of advertisements and listings to attest to the landlord's efforts to find a suitable replacement tenant.

Repairs - \$1,077.45

The landlord submitted an invoice for repairs in the amount of \$1,077.45 including \$697.50 in labour and the balance in materials and GST; the invoice listed the following and the landlord testified as to each item:

- Assessment of source of unexplained water on floor of bathroom
- Removal of wall bracket (from drywall)
- Replace garage door opener
- Replace water filter
- Clean up dog feces and garbage in backyard

Considerable numbers of scratches and drywall holes are noted in the condition inspection report and photographs. The broken garage door opener and patio door handle are included in the hand-written notes in the condition inspection report. The photographs substantiate the presence of a wall bracket screwed to the drywall.

Cleaning - \$140.00

The landlord submitted many photographs on the unit which he testified were taken when the tenant vacated. The photographs show that the unit needed cleaning. The condition inspection report contained hand written notes on moving out stating that the unit needed cleaning. The landlord provided a receipt in the amount of \$140.00 for cleaning of the unit.

The landlord filed the Application for Dispute Resolution on March 12, 2019.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

Cleaning

I have considered all the evidence submitted by the landlord, including the photographs showing the unit needed cleaning, the receipt for cleaning and the hand-written notes on the condition inspection report indicating the unit needed cleaning; I have considered the landlord's testimony that the document was signed by the tenant on moving in (indicating the unit was clean and in good condition) and moving out (indicating cleaning was needed).

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred a reasonable cleaning expense of \$140.00, and the landlord took all reasonable steps to mitigate or reduce expenses.

I find the landlord is entitled to a monetary award in the amount requested of \$140.00.

Damages \$1,077.45

The landlord submitted an invoice for repairs in the amount of \$1,077.45 comprising \$697.50 in labour and the balance in materials and GST.

I have considered all the evidence submitted by the landlord, including the affirmed testimony of the landlord describing the damages caused by the tenant during the tenancy and the necessary repairs; I have considered the receipt in the claimed amount, the photographs, and hand-written notes on the condition inspection report describing some of the damages.

While not all the damages are described in the photographs or in the hand-written notes, the landlord testified to the damages and the cost of repairs as claimed. Considering all of the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed repairs as described in the invoice supported by his testimony, photographs and hand-written notes on the report; I find that the total amount requested reflects an appropriate amount of labour and materials to remediate the damages described and proven. I accept the landlord's testimony that the landlord took all reasonable steps to mitigate expenses.

I therefore find the landlord is entitled to a monetary award as requested of \$1,077.45.

Rent

The landlord testified the tenancy was month-to-month. For a month-to-month, or periodic tenancy agreement, a tenant must serve written notice to end the tenancy and assure that it is received at least one month before the effective date of the notice and before the day that rent is due.

As the tenant failed to provide the required notice, the tenant is responsible to reimburse the landlord for rent for the month of March 2019. I am satisfied based on the

landlord's testimony and evidence, that all reasonable steps were taken to reduce or mitigate the landlord's damages by attempting to find a suitable replacement tenant as soon as the tenant vacated. I have taken into account the landlord's evidence of advertising and the reduction in rent shortly after the tenant vacated.

The tenant is not responsible for the rent outside this one-month period.

I accordingly allow the landlord reimbursement of \$2,900.00 representing rent for one month notice period, that is, the month of March 2019.

Filing fee

As the landlord has been successful in the landlord's claim, I grant the landlord a monetary order in the amount of \$100.00j as reimbursement of the filing fee.

Summary of Award

I grant the landlord a monetary order in the amount of **\$4,217.45** summarized as follows:

| ITEM | AMOUNT |
|------------------------------------|-------------------|
| Rent – for March 2019 (\$2,900.00) | \$2,900.00 |
| Repairs | \$1,077.45 |
| Cleaning | \$140.00 |
| Reimbursement of the filing fee | \$100.00 |
| Total Monetary Order | \$4,217.45 |

Conclusion

The landlord is entitled to a monetary order in the amount of **\$4,217.45**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: June 29, 2019

Residential Tenancy Branch