



Dispute Resolution Services

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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*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended. The tenant attended with her advocate PK ("the tenant"). Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The respondent acknowledged receipt of the applicant's Notice of Hearing and evidentiary materials. No issues of service were raised. I find the respondent was served in accordance with section 89 of the *Act*.

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 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*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties entered into a tenancy agreement beginning March 1, 2017. A copy of the month-to-month tenancy agreement was submitted as evidence. Rent was \$1,352.00 monthly payable on the first of the month. At the beginning of the tenancy the tenant paid a security deposit and pet deposit in the total amount of \$1,300.00 ("the security deposit"). The landlord holds the security deposit.

The landlord testified he obtained an order of possession for the unit effective February 5, 2019 but the tenant applied for a review of the order which was denied.

The landlord claims a monetary award for unpaid rent for February 2019 as the tenant did not fully vacate the unit until February 19, 2019. The tenant claimed the landlord is only entitled to a proportionate rent from February 1 – 16, 2019, the date she personally left the unit.

The landlord submitted a copy of the inspection report on moving in and moving out signed by both parties. The report on moving out is dated February 15, 2019 and contains the following hand-written terms:

*Tenant agrees to dig up all plants, rake yard and make sure all dog poop is cleaned up once it's thawed, * weather dependant. Tenant and Landlord will communicate about this March 1, 2019.*

The landlord stated that he met with the tenant at the unit on February 19, 2019 and the tenant had not fully removed all her possessions or complied with the report. The landlord testified that by the time the tenant did so, it was too late to find a tenant for the remainder of the month of February or for the month of March.

The landlord testified the unit was rented again on April 1, 2019.

The tenant was required to reimburse the landlord for the filing fee in the amount of \$100.00 in the previous arbitration and the landlord had been granted a monetary order in this amount.

The landlord filed this Application for Dispute Resolution on March 4, 2019.

At the outset, the parties agreed upon the following:

1. The balance of the security deposit is \$1,200.00 as the above-mentioned monetary order for \$100.00 was satisfied from the security deposit held by the landlord;
2. The tenant agreed to reimburse the landlord for part of the landlord's monetary claim as follows:

| ITEM | AMOUNT |
|-------------------------------------|-----------------|
| Reimbursement for waste fee | \$35.00 |
| Reimbursement hydro invoice | \$180.57 |
| Reimbursement lock replacement cost | \$33.66 |
| Agreed Monetary Award | \$249.23 |

3. The parties agreed the remaining issue was the landlord's claim for reimbursement of rent for the month of February 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 landlords to prove the landlord is entitled a claim for a monetary award.

I find that the landlord has met the burden of proof on a balance of probabilities that the landlord is entitled to a monetary award for rent for the entire month of February 2019 and not solely rent on a per diem basis for the 16 days the tenant occupied the unit out of the 28 days in the month.

I accept the landlord's testimony as the most likely version of events that the tenant did not fully move out on February 16, 2019 as she claimed, and it was several days after that before her remaining belongings were removed. In reaching this conclusion, I have considered that the parties signed a condition inspection report on February 15, 2019 in which the tenant promised to attend to plant removal and cleaning before leaving. Considering all the evidence, I find the tenancy ended on February 19, 2019.

As this landlord filed this Application on March 4, 2019, I find the landlord brought an application for damages and for authorization to apply the security deposit to the monetary award within 15 days of the tenant vacating the unit.

Policy Guideline # 3 – Claims for Rent and Damages for Loss of Rent provides guidance on the landlord's obligations to take reasonable steps to reduce losses. The Guideline states in part as follows:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

I find the landlord did not advertise the unit for rent until the tenant vacated on February 19, 2019 due to his uncertainty about the date of availability of the unit and the condition of the unit at the end of the tenancy. I find the landlord acted reasonably in waiting until the tenant vacated and had removed all her possessions before advertising the unit for rent. I accept the landlord's evidence that he was unable to find a replacement tenant until April 1, 2019.

Considering all the testimony and evidence, I find the landlord suffered a loss of rent for the month of February 2019 for which the tenant is responsible to compensate the landlord.

As the landlord has been successful in this application, I grant the landlord a monetary award for reimbursement of the filing fee in the amount of \$100.00.

I authorize the landlord to apply the security deposit to the monetary award pursuant to section 72.

I grant the landlord a monetary award of **\$501.23** summarized as follows:

| ITEM | AMOUNT |
|------------------------------------|-----------------|
| Monetary award agreed to by tenant | \$249.23 |
| Rent February 2019 | \$1,352.00 |
| Reimbursement of the Filing Fee | \$100.00 |
| (Less Security Deposit) | (\$1,200.00) |
| TOTAL Monetary Order | \$501.23 |

Conclusion

The landlord is entitled to a monetary order in the amount of **\$501.23**. 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 26, 2019

Residential Tenancy Branch