



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S, MNR-S, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord, R.W. attended the hearing via conference call and provided testimony. The landlord, R.W. also attended as agent for the named landlord, A.C. stating that the two were legal spouses. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 11, 2019 at her place of business. The landlord stated that the tenant failed to give notice ending the tenancy and did not provide a forwarding address in writing for return of the security deposit. The landlords referenced an email sent by the tenant on November 30, 2018 which shows the title of "Owner/General Manager" at a local restaurant with a provided address. The landlord confirmed that the address is for the named restaurant and that it is still operating as of the date of this hearing. The landlords have provided a copy of the Canada Post Registered Mail Receipt as confirmation of service. I accept the undisputed evidence of the landlords and find that the tenant was sufficiently served. Although the tenant failed to attend or submit any

documentary evidence, I find that the tenant is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for the above noted claims?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2016 on a fixed term until August 31, 2018 as per the submitted copy of the signed tenancy agreement dated July 28, 2016. The monthly rent was \$2,700.00 payable on the 1st day of each month. A security deposit of \$1,350.00 was paid. A condition inspection report for the move-in was completed by both parties on July 28, 2016. No condition inspection report for the move-out was completed.

The landlords seek a monetary claim of \$23,539.15 which consists of:

\$1,316.17	Unpaid Utilities
\$493.07	Unpaid Utilities
\$3,420.20	Repair Costs for Damage
\$1,065.96	New Carpet Replacement
\$3,543.75	Painting, Damaged Walls and Trim
\$2,700.00	Unpaid Rent, November 2018
\$11,000.00	Loss of Rental Income, 4 months X \$2,700 (December 2018, January to March 2019)

The landlords claim that the tenants "left without giving written notice, did not pay the rent for the last month" of occupancy and did not pay the utilities. The landlord also claims that the tenant caused significant damage to the house prior to the landlord selling the property. In support of these claims the landlord provided invoices/receipts, 70 photographs of the rental unit at the end of tenancy, a signed copy of the signed tenancy agreement, a completed copy of the condition inspection report dated July 31, 2018 by both parties. The landlord stated that multiple attempts to clean the carpet were made using a commercial carpet cleaning machine that provided unsuccessful. As a result a new carpet had to be purchased and installed because of the stain. The

landlord stated that repairs were completed during the month of January 2019 and the property sold in April 2019. During the hearing the landlord clarified that no attempts to re-rent the rental were made as he did not want to bother ending a tenancy with a possible pending sale of the property.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed evidence of the landlord that the tenant vacated the rental unit on November 30, 2018 without any notice and without paying any rent for November 2018. The landlord provided undisputed evidence that the tenant failed to pay for the utilities while they were in possession of the rental unit. The landlord provided undisputed evidence of damage left throughout the rental property which required repairs and the painting of the repaired walls. The landlord provided undisputed evidence of a stained carpet that was not cleanable and was forced to replace the carpet. This evidence was provided by the landlord and referenced in the submitted documentary evidence. On all these claims, I find that the landlords have established a claim.

On the landlords' claim of lost rental income of \$11,000.00, I find that the landlord has failed. The landlord's claim is for the loss of 4 months of rental income at \$2,700.00 per month. However, the landlord has established a loss of rental income for two months (December 2018 and January 2019) of \$2,700.00 per month for a total of \$5,400.00.

Residential Tenancy Branch Policy Guideline # 5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is

reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed...

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved...

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

In this case, the landlords provided undisputed testimony that repairs were completed in January 2019, but that no efforts were made to re-rent the property. The landlords instead listed the property for sale and completed a sales transaction in April 2019. I grant a partial award for the months of December 2018 and January 2019 of lost rental income for \$5,400.00 as the landlord was in the process of making the property rentable by completing all necessary repairs and having suffered a loss of rental income while the unit was un-rentable. The remaining portion of the landlords claim is dismissed as it cannot be said that the landlord made any reasonable efforts to re-rent the unit as no effort was made since the property was listed for sale.

The landlords have established a total monetary claim of \$17,939.15. The landlords having been successful are entitled to recovery of the \$100.00 filing fee. I also authorize the landlords to retain the \$1,350.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$16,689.15.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: July 18, 2019

Residential Tenancy Branch