



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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

KC ('landlord') appeared and testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed term tenancy began on June 1, 2018, with monthly rent set at \$1,250.00. The landlord collected a security deposit in the amount of \$625.00, which they still hold. The tenant moved out some time on or about January 30 or 31, 2019. The landlord provided a copy of the tenancy agreement which shows that this fixed term tenancy was to end on May 31, 2019.

The landlord submitted a monetary claim for \$3,965.42 in order to recover their losses as set out below:

Item	Amount
Liquidated Damages as set out in the Tenancy Agreement	\$625.00
Floor Refinishing	2,000.00
Cleaning	160.00
Carpet Cleaning & Repairs	179.42
Rent Differential for 4 months (\$250.00 x 4)	1,000.00
Total Monetary Order Requested	\$3,964.42

The landlord's agent testified in this hearing that the tenant had attended the office in January of 2019 in order to inform the landlord that she was pregnant, and will be moving in with her boyfriend. The landlord's agent testified that the tenant did not provide proper written notice as required by the *Act*, and the tenant was explained the consequences of ending the fixed-term tenancy early, including the liquidated damages clause as set out in the tenancy agreement.

The landlord's agent testified that they had mitigated the tenant's exposure to losses by re-listing the rental unit immediately, for the same monthly rent. Despite the landlord's efforts, the landlord was only able to re-rent the rental unit for February 1, 2019 at a reduced monthly rent of \$1,000.00. The landlord is applying for the rent differential of \$250.00 for the four remaining months of the fixed-term agreement. The landlord testified that the tenant was very cooperative with allowing the landlord to show the rental unit to prospective tenants, but the landlord is seeking a monetary order for liquidated damages in order to cover the costs associated with filling the vacancy.

The landlord is also seeking a monetary order for cleaning and for the damages left by the tenant. The landlord's agent testified that the tenant failed to leave the rental unit in reasonably clean and undamaged condition. The landlord testified that the tenant did not clean the carpet, nor the rental unit. The landlord agent also testified that 90 percent of the flooring in the rental unit was hardwood, and was scratched up by the tenant. The landlord provided numerous photos, an inspection report, invoices, and quotes in support of their claim. The landlord's agent testified that they have yet to repair the flooring, although a quote was obtained in the amount of \$1,890.00 to repair the flooring, which was obtained from a local company, and would be half the cost of replacing the damaged flooring. The landlord's agent testified that the tenant did not attend the pre-scheduled move-out inspection, which was for 10:00 a.m. on January 31, 2019. The landlord's agent testified that they received a text message from the tenant informing them that the keys were on the counter.

The tenant disputes the landlord's testimony that she had damaged the floor. The tenant testified that the floor was already scratched, and she had photographs to support her testimony, although they were not submitted in evidence. The tenant admitted that the carpet was not cleaned as the central vacuum was not working.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (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.

I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out four months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is only claiming \$625.00 for liquidated damages as specified in the tenancy agreement, in addition to the rent differential for the 4 remaining months of the fixed term tenancy.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary losses for the remaining months of this tenancy as is required by section 7(2) of the *Act*. I am also satisfied that the landlord had clearly communicated to the tenant that she would owe the landlord \$625.00 in liquidated damages for the early end of this tenancy. I accept the landlord's testimony that this was communicated on both the written tenancy agreement, as well as again when the tenant had given verbal notice that she would be ending this tenancy. Accordingly, I allow the landlord's monetary claim of \$625.00 for liquidated damages, and \$1,000.00 for the rent differential for the remaining four months of the fixed-term tenancy.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with quotes and invoices, as well as photos. I am also satisfied that the landlord

had made an effort to mitigate the tenant's exposure to the landlord's monetary losses for repairing the hardwood flooring, and had obtained a reasonable quotation to repair the flooring. I find that although the tenant provided an explanation for why the carpet was not cleaned, the fact that the central vacuum was not working does excuse the tenant from her obligations to return the unit to the landlord in reasonably clean condition. I also find that despite the tenant's testimony that she had photos to support her testimony, the tenant did not provide these photos in evidence for this hearing despite having adequate time and the opportunity to do so for this hearing. I find that the landlord provided detailed evidence and testimony in support of their claims. Accordingly, I find the landlord is entitled to compensation for these losses. I issue a monetary award of \$179.42 for the carpet cleaning, \$160.00 for the cleaning and \$1,890 for the flooring repairs.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,329.42 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the monetary claim for damages and losses, plus recover the \$100.00 filing fee for this application.

Item	Amount
Liquidated Damages as set out in the Tenancy Agreement	\$625.00
Floor Refinishing	1,890.00
Cleaning	160.00
Carpet Cleaning & Repairs	179.42
Rent Differential for 4 months (\$250.00 x 4)	1,000.00
Filing Fee	100.00
Less Damage Deposit Held by Landlord	-625.00
Total Monetary Order Requested	\$3,329.42

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: July 17, 2019

Residential Tenancy Branch