



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-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's property manager and agent ("the landlord") appeared at the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the tenants 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 tenants were provided.

The landlord provided affirmed testimony that the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May

8, 2019 and deemed received by the tenants under section 90 of the *Act* five days later, that is, on May 13, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on May 13, 2019.

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 landlord provided uncontradicted testimony as the tenants did not attend the hearing.

The landlord testified that the 1-year fixed term tenancy began on August 1, 2018 with an anticipated end date of July 31, 2019. The tenants vacated the unit on March 31, 2019 without notice. Rent was \$2,750.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit and pet deposit in the total amount of \$2,750.00 ("the security deposit") which the landlord holds. The tenants have not provided authorization to the landlord to retain the security deposit. The landlord submitted a copy of the tenancy agreement.

At the beginning of the tenancy, the parties carried out a condition inspection indicating that the unit was in good condition; the landlord submitted a copy of the condition inspection report on moving in.

The landlord testified the tenants informed the landlord in early March that they had bought a house and were moving out at the end of March 2019. The tenants did not provide notice to the landlord.

The landlord testified the landlord immediately began advertising for a replacement occupant by posting on websites and social media sites on March 3, 2019. The landlord stated the landlord showed the unit five times in March 2019; as the landlord was unsuccessful in finding a replacement occupant, the landlord lowered the rental by \$60.00 a month in early April 2019. The landlord and a new occupant entered into a tenancy agreement for the unit dated April 20, 2019 for a tenancy commencing May 1, 2019 at the reduced rental.

The landlord testified the parties conducted a condition inspection on moving out of the unit on April 4, 2019 and they signed a report. The report indicated that the carpets needed cleaning. The tenants instructed the landlord to pay for the cleaning of the carpets and deduct the cost from the security deposit. The landlord submitted a copy of the report.

The landlord had the carpets cleaned at a cost of \$304.50 for which the landlord requested compensation. The landlord submitted a receipt for the expense.

The landlord claimed compensation for the loss of rent for the month of April 2019 as well as \$60.00 a month for the reduced rent for each of the months of May, June and July 2019 until the end of the fixed term.

The landlord clarified the landlord's claim as follows:

| ITEM | AMOUNT |
|--|-----------------|
| Rent for April | \$2,750.00 |
| Cleaning carpets | \$304.50 |
| Rent for May, June and July 2019 (reduced rent of \$60.00 x 3) | \$180.00 |
| Reimbursement of the filing fee | \$100.00 |
| (Less security deposit) | (\$2,750.00) |
| Total Monetary Award Requested | \$584.50 |

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.

Carpet cleaning

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

I accept the landlord's uncontradicted evidence supported by the condition inspection report on moving out that the tenants did not clean the carpets at the end of the tenancy and the landlord has incurred the expense as claimed for which the landlord submitted a receipt. I therefore grant the landlord a monetary award in the amount of \$304.50.

Loss of rent

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

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.** (emphasis added)

Therefore, the tenants were required to provide notice in this case on or before February 28, 2019 stating the tenants were leaving on March 31, 2019. The tenants did not provide the notice required under section 45(2) and under the Agreement.

Section 7 of the Act provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do **whatever is reasonable to minimize the damage or loss.** (emphasis added)

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

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.

The landlord testified to efforts in the month of March 2019 to find a replacement tenant beginning as soon as the landlord knew the tenants were leaving. The landlord testified the landlord reduced the rent by \$60.00 a month in early April 2019 and located a suitable replacement tenant with a new tenancy agreement commencing May 1, 2019.

Considering the evidence provided by the landlord, I am satisfied the landlord made reasonable efforts to mitigate loss of rent.

Considering the uncontradicted evidence of the landlord, I find the tenants failed to provide notice as required to end the tenancy because of which the landlord has incurred a loss of rent for one month for which the landlord is entitled to a monetary award. Similarly, I accept the landlord's evidence that the landlord reduced the rent and thereby incurred a loss of \$60.00 a month for three months until the end of the fixed term for which the landlord is entitled to a monetary award.

The landlord is therefore entitled under this heading to a monetary award in the amount of \$2,750.00 for loss of rent for one month and \$180.00 for loss of rent for the remaining three months of the agreement.

Security deposit

The landlord is authorized under section 72 to apply the security deposit to the monetary award.

Filing fee

As the landlord is successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee of 4100.00.

Summary

The landlord is granted a monetary order of **\$584.50** calculated as follows:

| ITEM | AMOUNT |
|--|-----------------|
| Rent for April 2019 | \$2,750.00 |
| Cleaning carpets - expense | \$304.50 |
| Rent for May, June and July 2019 (reduced rent of \$60.00 x 3) | \$180.00 |
| Reimbursement of the filing fee | \$100.00 |
| (Less security deposit) | (\$2,750.00) |
| Total Monetary Order | \$584.50 |

Conclusion

The landlord is entitled to a monetary order in the amount of **\$584.50**. This order must be served on the tenants. If the tenants fail 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: August 6, 2019

Residential Tenancy Branch