



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

- a monetary order for compensation for 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.

LA ("landlord") appeared as agent for 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 tenants 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 the tenants duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

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

Background and Evidence

This month-to-month tenancy began on January 15, 2018, with monthly set at \$1,332.50 at the end of the tenancy. The tenants had paid a security deposit in the amount of \$650.00, which the landlord still holds.

It was undisputed by both parties that this tenancy had ended on March 31, 2019 after the tenants gave notice on March 1, 2019. The tenants provided the landlord with their forwarding address on April 26, 2019.

The landlord is requesting monetary compensation as follows:

Loss of Rental Income for April 1, 2019 – April 15, 2019	\$650.00
Cleaning	126.00
Carpet Cleaning	115.45
Damaged Mirrored Door	125.00
Filing Fee	100.00
Total Monetary Award Requested	\$1,116.45

The landlord is seeking half a month of lost rental income due to the fact that the tenants failed to comply with the *Act* by failing to give proper notice of termination. The landlord's agent also felt that the tenants made it difficult for the landlord to show the rental unit on an earlier date, which contributed to their losses. The landlord was initially able to re-rent the rental unit for April 1, 2019, but that tenant had changed their plans and did not rent the rental unit. The landlord was able to fill the vacancy for April 16, 2019 for approximately the same monthly rent. The landlord testified that their decision to rent to the first tenant was a result of the limited options the landlord had due to the limited notice the landlord was given by the tenants, and their attempt to mitigate any loss of rental income.

The tenants are disputing the landlord's monetary claim for loss of rental income as they feel that the landlord was able to re-rent the suite for April 1, 2019, and that the fact that this tenancy did not begin was beyond their control. The tenants also dispute the landlord's claims that they were difficult to work with. The tenant SJS testified that she was never contacted by the landlord to accommodate any showings.

The landlord is also seeking compensation for the tenant's failure to leave the rental unit in reasonably clean and undamaged condition. The landlord's agent was unable to

confirm the age of the damaged mirrored door. The landlord submitted a monetary claim of \$125.00, but confirmed that she had never received an invoice from the landlord for this loss. The tenants confirmed in the hearing that they are not disputing the landlord's monetary claim for the cleaning. The tenants also agreed to half of the cost of the damaged mirrored door.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and
 - (b) 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 tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as required by section 45(1) of the *Act*, and I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite for April 16, 2019, and are requesting half a month's rent in compensation for their loss. I have considered the sworn testimony of both parties, and although the tenants are correct that it was beyond their control that the first tenant had cancelled, I do accept the landlord's testimony that they had less than 30 days to advertise, thoroughly screen prospective

tenants, and fill the vacancy for April 1, 2019. I find that the timeline affected the landlord's ability to fill the vacancy for April 1, 2019, despite the landlord's effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for this tenancy, as is required by section 7(2) of the *Act*. I find that the landlord suffered a monetary loss of half a month's rent, and this was due to the tenants' failure to comply with section 45 of the *Act*. Accordingly I find that the landlord is entitled to \$650.00 for loss of rental income.

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 condition except for reasonable wear and tear.

As the tenants are not disputing the landlord's monetary claim for cleaning, I allow the landlord this portion of their claim. The tenants agreed to compensate the landlord for half of the cost of the damaged mirrored door. As the landlord did not provide any invoices or receipts to support this loss, I allow the landlord \$62.50 in compensation as agreed to by the tenants.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$403.95 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenants' security deposit in partial satisfaction of their monetary claim.

Loss of Rental Income for April 1, 2019 – April 15, 2019	\$650.00
Cleaning	126.00
Carpet Cleaning	115.45
Damaged Mirrored Door	62.50
Filing Fee	100.00
Less Damage Deposit Held by Landlord	-650.00

Total Monetary Award	\$403.95
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The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: August 13, 2019

Residential Tenancy Branch