



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 unpaid rent, pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss 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

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 dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

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

Background and Evidence

This fixed-term tenancy began on October 1, 2017, and was to end on September 30, 2018. The tenant moved out on December 1, 2017. Monthly rent was set at \$1,300.00, and the landlord collected a security deposit of \$250.00 and a pet damage deposit of \$200.00, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The tenant testified that she was not provided with a move-in or move-out inspection report for this tenancy. The landlord testified that he had offered to prepare them, but the tenant refused a copy.

The landlord requested monetary compensation as follows:

Damage to concrete (claim amended)	\$275.00
Loss of rent (December 2017-March 2018)	5,200.00
Utilities for occupant not on lease	600.00
Total Monetary Award Requested	\$6,075.00

The landlord amended his monetary claim for the concrete damage from \$400.00 to \$275.00 to reflect the actual cost to repair the concrete. The landlord testified that he attributes the damage to the tenant when moving as the moving company had damaged the tenant's belongings. The tenant disputes this claim stating that the landlord had no proof that the damage to the concrete was due to the tenant's actions, and was not pre-existing damage.

The landlord testified that as soon as notice was received from the tenant that she was moving out in November 2017, he had started looking for a new tenant. Both parties confirmed in the hearing that the tenant had paid rent only up to November 2017. The landlord was able to re-rent the suite for \$1,100.00 in monthly rent starting on April 1, 2018. The landlord is requesting the lost rental income for the months of December 2017 through to March 2018.

The landlord is also requesting \$600.00 for the utilities as the tenant had allowed her daughter to reside an extra month without his permission. The tenant does not dispute that her daughter was residing with her, but that the landlord had never clarified the amount that he would charge her. The tenant testified that the amount the landlord is requesting is extreme for one extra occupant.

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.

The landlord provided undisputed evidence at this hearing that the tenant moved out prior to the end of this fixed-term tenancy. 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 10 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*.

I find further that the evidence shows that as a result of the tenant's early termination of this tenancy, the landlord suffered a rental loss. The evidence of the landlord is that they were able to re-rent the unit after four months. I am satisfied that the landlord had made efforts to mitigate the tenant's exposure to the landlord's monetary loss of rent as is required by section 7(2) of the *Act* by looking for a tenant as soon as the landlord was given notice, and by filling the vacancy at a lower rate of rent. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$5,200.00 for the four months of lost rental income due to the early termination of this tenancy.

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 or 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 a balance of probabilities, that the tenant had caused damage in the amount claimed by the landlord.

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. The landlord testified that the tenant was not provided with a move-in or move-out inspection report because the tenant did not want a copy. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. In the absence of any move-in and move-out inspection reports in evidence, I have no way of ascertaining what damage occurred during this tenancy, and what the pre-existing condition of the concrete was. I find that the landlord has not provided sufficient evidence to support that the tenant had caused the damage to the concrete. On this basis, I dismiss the landlord’s monetary claim for damage to the concrete without leave to reapply.

In regards to the landlord’s allegation that the tenant had allowed an additional occupant to stay in the unit beyond an agreed amount of time, I find that it is undisputed that the tenant had allowed her daughter to stay despite the landlord’s lack of approval. The tenant, however, disputes the fact that she was given proper notice of additional fees or surcharges that would be applied if the additional occupant remained in the rental unit. The tenant also disputes that the extra occupant cost the landlord an additional \$600.00 in utilities.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I am not satisfied that the landlord has met the burden in establishing the value of their claim. Although the tenant admitted to allowing her daughter to stay with her, I am not satisfied that the landlord had provided written notice to the tenant that the tenant would be responsible for additional utilities in the amount claimed by the landlord. I am also not satisfied that the landlord had established that the landlord suffered a loss equivalent to the amount claimed, and on that basis I dismiss the landlord's monetary claim for \$600.00 without leave to reapply.

The landlord continues to hold the tenant's security and pet damage deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits in partial satisfaction of the monetary claim.

As the landlord was not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

Conclusion

I issue a Monetary Order in the amount of \$4,800.00 in the landlord's favour, which allows a monetary award for the tenant's failure to comply with sections 44 and 45 of the *Act*, and allows the landlord to retain the security deposit in partial satisfaction of the monetary claim, plus recover half of the filing fee.

Loss of rent (December 2017-March 2018)	\$5,200.00
Half of Filing Fee	50.00
Less Security and Pet Damage Deposits	-450.00
Total Monetary Award	\$4,800.00

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. 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.

The remainder of the landlord's monetary application is dismissed without leave to reapply.

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 9, 2018

Residential Tenancy Branch