



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PREMIER INVESTMENTS CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order in the amount of \$5,445.00 for damages to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenant's security deposit for any amount owing, and to recover the cost of the filing fee.

The tenant and two agents for the landlord ES and LC ("agents") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

The landlord stated they were not served with any documentary evidence from the tenant. The tenant confirmed the landlord was not served with their documentary evidence. As a result, the parties were advised during the hearing that I would be excluded all tenant documentary evidence as it was not served on the landlord in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). The landlord did not submit any documentary evidence to the RTB in support of their application. The parties were advised that I would consider their affirmed testimony as a result.

The parties described a previous decision file number ("previous decision"), which has been included on the cover page of this decision for ease of reference. The parties were also advised that any documentary evidence from the previous decision would not carry forward to this file number and would have had to be submitted again to be considered

for this application as per the RTB Rules. The previous decision was dated April 2, 2019, and will be referred to later in this decision as a decision was made in relation to the date the landlord was served with the tenant's written forwarding address.

Preliminary and Procedural Matter

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that the tenant vacated the rental unit on October 31, 2018, although a fixed-term tenancy began on February 23, 2019, and did not revert to a month to month tenancy until February 28, 2019. Monthly rent during the tenancy was \$1,090.00 per month and was due on the first day of each month. Although the tenant mentioned a rebate, I have no tenancy agreement before me to support such a rebate. The tenant paid a security deposit of \$545.00, which the landlord continues to hold.

The landlord's monetary claim of \$5,445.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair of room doorknob/lock	\$150.00
2. Loss of rent x 4 months (@ \$1,090.00 per month x 4)	\$4,360.00
3. NSF cheque fees (@ \$45.00 x 2)	\$90.00
4. Marketing and admin. Costs to re-rent premises	\$200.00
5. Filing fee	\$100.00
6. Request to hold security deposit	\$545.00
7. TOTAL	\$5,445.00

Firstly, I noted a mathematical error in the above-noted calculation provided by the landlord. The landlord already is holding the tenant's \$545.00 security deposit, so I dismiss item 6 as the landlord is not entitled to ask for an additional \$545.00 at the hearing for a security deposit that has already been paid. I note, however; that the landlord is entitled to request to offset any amount awarded from the security deposit retain by the landlord and as a result, I will address the \$545.00 security deposit held by the landlord later in this decision.

Regarding item 1, the landlord has claimed \$150.00 for the cost to repair a room doorknob/lock. The agent confirmed that no receipts or photographs were submitted in support of this portion of their claim. The tenant did not agree with this portion of the landlord's claim. The agent referred to the following paragraph on page nine of the previous decision, which reads:

I find that the repair of the door knob/lock was an emergency repair as defined under section 33(1)(c)(iv) of the *Act* as the door knob/lock gave access to the tenant's room. I therefore find that the landlord was permitted to enter the subject rental property under section 29(1)(f) as failing to repair the door knob/lock put the personal property of the tenant at risk.

The landlord was advised that I did not find the above-noted paragraph supported that the tenant damaged the doorknob/lock. As a result, I will address this further in this decision.

Regarding item 2, the landlord has claimed loss of rent for four months at \$1,090.00 per month from November 2018 to February of 2019, inclusive. The agent stated that the landlord is seeking four months of loss of rent as the tenant breached the fixed-term tenancy early by vacating the rental unit on October 31, 2018, even though the fixed-term was not scheduled to expire until February 28, 2019. The tenant stated that they provided their written notice on November 2, 2018. The agent stated the tenant did not provide any notice before vacating the rental unit.

Although the landlord provided no documentary evidence to support that the landlord advertised the rental unit, the agent stated that landlord started to advertise the rental unit at the end of October 31, 2018 on several sites including Kijiji, Craigslist and Padmapper. The agent stated that the landlord was unable to re-rent the rental unit until February 28, 2019. The agent was unsure of how much the landlord advertised the rental unit for and stated, "maybe \$990.00 to \$1,090.00".

Regarding item 3, the landlord is seeking \$45.00 for each of two months where the tenant issues rent cheques that “bounced” and were returned as a result with non-sufficient funds (“NSF”). There was no documentary evidence before me to support that the landlord paid \$45.00 to a financial institution for an NSF fee.

Regarding item 4, the landlord is seeking \$200.00 as the cost to re-rent the rental unit. There was no written tenancy agreement before me to support that a liquidated damages clause in the amount of \$200.00 was agreed upon between the parties in writing at the start of the tenancy, which I will address later in this decision.

Regarding item 5, the landlord has requested the recovery of the cost of the \$100.00 filing fee paid to apply for dispute resolution, which I will address later in this decision.

Regarding item 6, the landlord is seeking \$545.00 for the security deposit; however, as described above, the landlord is already holding the tenant’s \$545.00 security deposit. I note that in the previous decision dated April 2, 2019, the arbitrator made a finding that the landlord must either return or file an application against the tenant’s security deposit within 15 days of the receipt of the April 2, 2019 previous decision. The landlord filed their application claiming against the tenant’s security deposit on April 4, 2019, just two days after the previous decision was rendered.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - The landlord has claimed \$150.00 for the cost to repair a room doorknob/lock. Firstly, I have considered that the landlord failed to submit any receipts or photographs in support of this portion of their claim. Secondly, and as described above, I find the above-noted paragraph does not support that the tenant damaged the room doorknob/lock, only that it required repair. Given the above, I find the landlord has failed to meet parts one, two and three of the four-part test for damages or loss under the *Act*. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

Item 2 – The landlord has claimed loss of rent for four months at \$1,090.00 per month from November 2018 to February 2019, inclusive. Although I find the tenant breached the fixed-term tenancy agreement, I find the landlord has failed to provide sufficient evidence to support that the landlord complied with section 7(2) of the *Act* and the fourth part of the four-part test for damages or loss. Section 7(2) of the *Act* applies and states:

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]

I have reached this finding as I have considered that the agent could not recall how much the rental unit was advertised for, and I have no documentary evidence before me to support the agent's testimony. Therefore, I grant the landlord the loss of November 2019 rent in the amount of **\$1,090.00**; however, I dismiss the remaining three months due to insufficient evidence, without leave to reapply. At the very least, I would expect to see a copy of the advertisements, including the amount the rental unit is being advertised for, neither of which were before me.

I caution the tenant not to breach a fixed-term tenancy in the future, which I find the tenant breached under section 45(2) of the *Act*.

Item 3 - The landlord is seeking \$45.00 for each of two months where the tenant issues rent cheques that "bounced" and were returned as a result with non-sufficient funds

("NSF"). I have considered that the landlord failed to submit any documentary evidence to support that the bank charged two \$45.00 NSF fees. Therefore, I find the landlord has failed to meet part three of the four-part test for damage or loss and I dismiss this portion of the landlord's claim, without leave to reapply, due to insufficient evidence.

Item 4 – Although the landlord is seeking \$200.00 as the cost to re-rent the rental unit, I have considered that there is no tenancy agreement before me to support if there was a written liquidated damages clause. Therefore, without proof of a liquidated damages clause this item is dismissed due to insufficient evidence, without leave to reapply, as RTB Policy Guideline 4 deals with Liquidated Damages and states in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

Item 5 – As the landlord's application was partially successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee, pursuant to section 72 of the *Act*.

Item 6 – I will now address the security deposit held by the landlord. The previous decision dated April 2, 2019, the arbitrator made a finding that the landlord must either return or file an application against the tenant's security deposit within 15 days of the receipt of the April 2, 2019 previous decision. I find the landlord complied with the previous decision as the landlord filed their application claiming against the tenant's security deposit on April 4, 2019, just two days after the previous decision was rendered. As a result, I will offset the tenant's \$545.00 security deposit, which has accrued \$0.00 in interest under the *Act*, from the monetary award to the landlord.

Monetary Order – I find that the landlord has established a total monetary claim of **\$1,190.00**, comprised of \$1,090.00 for item 2 and \$100.00 for the filing fee. I authorize the landlord to retain the tenant's full security deposit including \$0.00 in interest of \$545.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$645.00**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$1,190.00. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$545.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the *Act*.

The landlord is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$645.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 16, 2019

Residential Tenancy Branch