



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation, compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord was present for the hearing while no one called in for the Tenant. The Landlord was affirmed to be truthful in his testimony and stated that the Tenant was served in person with the Notice of Dispute Resolution Proceeding package on July 4, 2019. The Landlord stated that as did not receive a forwarding address for the Tenant he served the Tenant in person at his place of employment.

The Landlord also stated that on September 23, 2019 the Tenant was served in person with a copy of his evidence. The Landlord stated that as he was previously threatened about being on the property, he had another person serve the evidence to the Tenant. The Landlord confirmed that he was present and witnessed the evidence package being handed directly to the Tenant.

I accept the affirmed testimony of the Landlord that the Tenant was served in person with the hearing documents on July 4, 2019 and with the Landlord’s evidence on September 23, 2019. Therefore, I find that the documents were served in accordance with Sections 88(a) and 89(1)(a) of the *Act*.

Preliminary Matters

On the Application for Dispute Resolution the Landlord named the Tenant/Respondent and included a second possible last name for the Tenant. However, the Landlord confirmed the Tenant's name as stated on the tenancy agreement and therefore the application was amended to remove the additional name for the Tenant that was included in brackets. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of the Landlord, not all details of the submissions are reproduced here.

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement that was submitted into evidence. The tenancy started on March 15, 2018 and was on a month-to-month basis. Rent in the amount of \$800.00 was due on the first day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy of which the Landlord still holds. The Landlord stated that the tenancy ended on May 31, 2019.

The Landlord filed the application seeking compensation in the amount of \$1,466.66. Included in this amount is a claim for unpaid rent in the amount of \$666.66. He testified that the Tenant provided 3 days verbal notice that he would be moving out of the rental

unit on May 31, 2019. The Landlord stated that due to the improper notice to end the tenancy the Tenant is responsible for rent as due on June 1, 2019.

The Landlord stated that he was able to re-rent the unit for June 26, 2019 and therefore is seeking a pro-rated rent amount from the Tenant for the period of June 1 to June 25, 2019. The Landlord was unsure of the exact date that he began advertising the rental unit for re-rental but stated that it was fairly early in June 2019 once the unit had been cleaned.

The Landlord is also seeking \$600.00 as compensation for damages, and \$200.00 which was stated on the application as an amount due over and above the security deposit. The Landlord stated that the amounts applied for on the application may not have been clear as he received estimates for repair work following the application submission.

The Landlord provided testimony that the flooring in the bedroom of the rental unit was damaged and that the estimate for repairs is \$635.00. The Landlord submitted a quote dated July 17, 2019 for replacement of the floors in the amount of \$654.78. He stated that the floors were new approximately six years ago and were not able to be repaired, requiring a full replacement instead.

The Landlord also testified as to an estimate for drywall repairs and repair of damaged weather stripping in the amount of \$400.00. The Landlord submitted an estimate dated June 1, 2019 for these repairs in the amount of \$436.80. He stated that damage in the rental unit was caused by a dog in the rental unit who tore the curtains and marked up the window sill, despite there being no pets allowed in the rental unit. The Landlord also stated that the Tenant had an outdoor cat that damaged the weather stripping while trying to get into the rental unit.

The Landlord also noted damage to the fridge in the rental unit and curtains, both of which he did not claim repair costs for. The Landlord submitted photos of the rental unit to show areas that were damaged and/or not clean. He also stated that \$200.00 was spent on cleaning the rental unit and submitted a receipt dated June 3, 2019 in the amount of \$200.00.

The Landlord stated that a move-in or move-out inspection was not completed with the Tenant. He submitted a copy of a move-in inspection report dated July 24, 2019 which

he stated was completed with the new tenant and shows the damage to the rental unit at the start of that tenancy.

The Landlord also testified that he did not receive a forwarding address from the Tenant and instead listed the Tenant's address as the Tenant's place of employment on the application. The Landlord confirmed that the Tenant did not agree to any deductions from the security deposit and that no amount has yet been returned.

Analysis

Regarding the Landlord's claim for unpaid rent, I refer to Section 45(1) of the *Act* which states the following:

- 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 also note that a tenant's notice must be in writing as per Section 52 of the *Act*. I accept the undisputed testimony of the Landlord that the Tenant provided verbal notice to end the tenancy on or around May 28, 2019. As such, despite not being in writing, I find that notice provided on this date would end the tenancy at the end of June 2019 in accordance with Section 45(1) as stated above. Therefore, I find that the Tenant owed rent in the amount of \$800.00 as due on June 1, 2019. However, I accept the Landlord's testimony that he is seeking a pro-rated rent amount due to finding a new tenant for June 26, 2019 and therefore award \$666.66 to the Landlord for the period of June 1, 2019 to June 25, 2019 as claimed.

Regarding the Landlord's claims for compensation and for damages, I refer to Section 7(1) of the *Act* which states the following:

- 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.

However, I find that the Landlord was not in compliance with Sections 23 and 35 of the *Act* regarding completion of a move-in and move-out inspection with the Tenant. While the Landlord submitted a move-in inspection from the next tenant in the rental unit and photos of the rental unit that he stated were taken at the end of the tenancy, I do not find that this establishes the condition of the rental unit at the start of the tenancy. A signed condition inspection report is evidence of the condition of the rental unit at the start of the tenancy as agreed upon by both parties.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* the party making the claim has the onus to prove the claim, on a balance of probabilities. By not establishing the condition of the rental unit at the start of the tenancy I am not satisfied that the Landlord met the burden of proof to establish that the damage was caused during the tenancy and therefore that the Tenant was in breach of the *Act* as required by Section 7 of the *Act*.

I also note that as stated by rule 2.5 of the *Rules of Procedure*, an applicant must submit a detailed calculation of any monetary claim being made. In this matter, I do not find that the Landlord's information was clear regarding the amounts being claimed, given that the amounts testified to did not match the information provided on the application and no amendment was filed.

As I am not satisfied that the Landlord met the burden of proof in establishing that the Tenant is responsible for the compensation and damage as claimed, I decline to award any compensation. The Landlord's claims for compensation and damages are dismissed, without leave to reapply.

As the Landlord was successful with the application for unpaid rent, pursuant to Section 72 of the *Act* I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

I accept the testimony of the Landlord that the Tenant did not provide a forwarding address and therefore find that Section 38(1) of the *Act* does not apply in terms of the timeline for the Landlord to file the application.

Instead, the Landlord may retain the security deposit towards compensation owed and is therefore awarded a Monetary Order in the amount outlined below:

June 1-June 25, 2019 rent	\$666.66
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$400.00)</i>
Total owing to Landlord	\$366.66

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$366.66** for June 2019 rent and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenant must be served with 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 claims are 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: October 09, 2019

Residential Tenancy Branch