



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the *Regulation*) or tenancy agreement, pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenant's security deposit for compensation for damage or loss under the *Act* and rent or utilities, pursuant section 67 of the *Act*; and
- authorization to recover the filing fee for this application, pursuant section 72 of the *Act*.

Both the landlord (DM) and the tenant (RV) attended.

As both parties were in attendance, I confirmed that there were no issues with service of the landlord's application for dispute resolution. The tenant confirmed receipt of the landlord's notice of hearing. The landlord confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – evidence

The landlord submitted the evidence file named “31053540_LL_2PG” on January 06, 2019, 3 days before the hearing. This evidence is excluded per section 3.14 of the Rules of Procedure.

Preliminary Issue – *Res Judicata*

The parties testified there was a previous Residential Tenancy Branch decision about the security deposit of the tenancy between the same parties.

I find the landlord’s application to retain part or all of the security deposit was previously decided. I therefore find the request related to security deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. The request for an authorization to retain a portion of the tenant’s security deposit is dismissed without leave.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and damages pursuant to section 67 of the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the accepted evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

Both parties also agreed the written tenancy agreement signed is a half-page hand written document dated June 02, 2017, the month to month tenancy started on June 14, 2017 and lasted until March 31, 2019. At the end of the tenancy the rent was \$988.00 per month due on the first day of the month. There was no move-in and move-out condition inspection report. The tenant’s notice to end tenancy was received by the landlord on March 10, 2019 (the Notice).

The landlord’s monetary claims are as follows:

New cabinets	\$1,000.00
Cleaning (carpet, stove and blinds)	\$537.94
One month rent	\$988.00
Total	\$2,525.94

The landlord testified when the tenancy started there was new carpet in the rental unit in perfect condition, the stove was almost brand new, the kitchen cabinets and windows blinds were in perfect condition. When the tenancy ended all the carpet had to be cleaned, the stove was greasy and needed replacements for the burners, the kitchen cabinets had water damage and the windows blinds were damaged.

The landlord also affirmed the rental unit was occupied by a new tenant on April 08, 2019.

The landlord provided, a ledger with a total of \$537.94 for cleaning costs, an estimate to replace the cabinets, and several photographs taken on March 07 and 31, 2019.

The tenant testified when the tenancy started the rental unit was dirty and the landlord refused to clean it, the stove was greasy and dirty, the kitchen cabinets and windows blinds were damaged. When the tenancy ended there was no extra damage to the rental unit, and the carpet had minor stains due to wear and tear.

The tenant also affirmed the rental unit was re-rented on March 31, 2019 and provided a social media conversation with the new tenants.

Analysis

Sections 7 and 67 of the Act state:

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not

complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Here, the landlord claims the tenant caused damages to the rental unit that ultimately cost the landlord money to repair.

Cleaning and new cabinets

In order for the landlord to get a monetary order related to damages caused by the tenant to the rental unit, he needs to prove the conditions of the rental unit at the start and the end of the tenancy.

The testimony of the parties conflicted in regard to the conditions of the rental unit when the tenancy started. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlord) has not met the burden on a balance of probabilities and the claim fails. The landlord did not provide any documentary evidence to support his testimony about the conditions of the rental unit at the outset of the tenancy.

I find, based on the photographs provided, the carpet had minor stains due to wear and tear when the tenancy ended.

I find the landlord has not proven, on a balance of probabilities, that the tenant caused damages to the rental unit. Therefore, I dismiss the landlord's claims for damages related to cleaning and new cabinets.

Loss of Rent

Section 45(1) of the Act sets out how a tenant may end a periodic tenancy:

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.

In this case, the tenant's Notice was provided on March 10, 2019 and he vacated on March 31, 2019.

I find the tenant did not provide the landlord with at least one month between the time the landlord received the notice and the tenant's end date of the tenancy, in contravention of section 45(1) of the Act. Therefore, I find the tenant failed to give notice to end tenancy in compliance with the Act.

I find the social media conversation the tenant provided does not prove the rental unit was re-rented on March 31, 2019. I accept the landlord's testimony that the rental unit was re-rented on April 08, 2019.

Residential Tenancy Branch Policy Guideline 5 states:

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.

Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

Given the landlord was able to re-rent the rental unit within eight days after it became vacant, I find the landlord took reasonable efforts to mitigate the loss by finding a new tenant.

I find that due to the tenant's failure to give proper notice, the landlord has incurred a loss of rent in the amount of \$263.46 (one month of rent (\$988.00) divided by thirty days multiplied by eight days). Accordingly, I find the landlord is entitled to a monetary award for that amount.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I dismiss without leave to reapply the landlord's request related to retention of the security deposit, new cabinets and cleaning.

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$363.46 for damage and for the recovery of the filing fee for this application. 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.

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: January 13, 2020

Residential Tenancy Branch