



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

- a Monetary Order for unpaid rent and compensation for damage or loss, and authorization to retain the security deposit in partial satisfaction of this monetary claim, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord attended at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and the landlord's witness and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding and evidence for this hearing. The landlord testified that at the beginning of August 2019, the tenant advised the landlord through text message that he was moving out of the rental unit. The landlord testified that the tenant blocked her from telephone communication so she went to the rental unit. At the rental unit, the landlord found out that the tenant had sublet the rental unit to other occupants without her knowledge or authorization. The landlord and tenant engaged in an altercation at the rental unit that escalated to the

point where the landlord called the police to attend out of fear of the tenant's aggressive behaviour to her and his unwillingness to discuss resolving the issues of unpaid rent.

The landlord testified that police spoke to her and the tenant and encouraged the parties to resolve their dispute through the Residential Tenancy Branch. The landlord testified that the police officer provided her with the tenant's address, which the police officer had obtained from the tenant.

The landlord testified that on September 9, 2019 she mailed the Notice of Dispute Resolution Proceeding package including her evidence by Canada Post registered mail to the tenant to the address for the tenant provided by to her by the police officer. The landlord submitted a registered mail tracking number (noted on the cover sheet of this Decision) in support of her testimony.

Based on the testimony of the landlord, I find that the landlord served the notice of this hearing and evidence in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, providing the following information pertaining to this tenancy:

- This fixed-term tenancy began May 15, 2019, with a scheduled end date of November 15, 2019.
- Monthly rent of \$2,950.00 was payable on the first of the month.
- The tenant paid a security deposit of \$1,475.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that the landlord and tenant participated in a condition inspection of the rental unit at the beginning of the tenancy, and the landlord referred to a copy of the move-in condition inspection report, signed by both parties, submitted into

documentary evidence in support of her testimony. The landlord testified that the rental unit was brand new, having been completed in April 2019.

The landlord testified that the tenant vacated the rental unit and refused to participate in a move-out condition inspection with the landlord.

The landlord testified that when she attended the rental unit on August 12, 2019 she found that the tenant was no longer residing at the rental unit and had sublet the rental unit to unknown occupants, who were in the process of moving out when the landlord arrived. The landlord recovered the rental unit keys from the occupants and therefore regained possession of the rental unit on August 12, 2019.

The landlord filed an Application for Dispute Resolution on August 30, 2019 seeking to retain the tenant's security deposit against her claims set out on the Monetary Order Worksheet for: unpaid rent of \$2,950.00 for the month of August 2019; loss of rental revenue of \$2,950.00 for the month of September 2019 as the tenancy was a fixed-term tenancy; unpaid TV/telephone bill of \$45.25 for August 2019; and the cost for repairing damage to the walls of \$307.89. In support of her claims, the landlord submitted into evidence a condition inspection report, text messages between her and tenant, a copy of the advertisement to re-rent the rental unit, receipts and photographic evidence of the condition of the rental unit at move-out.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

In this case, the landlord has claimed for compensation under several different categories. My findings, based on the testimony and evidence presented, on a balance of probabilities, are set out below.

Unpaid Rent, Rental Revenue Loss and Unpaid TV/Phone Bill

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenant to pay \$2,950.00 in monthly rent and that the tenant failed to pay rent for the month of August 2019. I also find that the tenancy was a fixed-term tenancy and I accept the landlord's unchallenged testimony, supported by a copy of the rental ad submitted into evidence, that the landlord attempted to re-rent the rental unit as soon as she found out that the tenant had vacated the rental unit, but was unsuccessful finding a new tenant for the month of September. As such I find that the landlord incurred a loss of rental revenue of \$2,950.00 for September 2019.

Therefore, I find the landlord is entitled to a monetary award of \$5,900.00 for unpaid rent owed by the tenant for August 2019 and lost rental revenue for September 2019.

Regarding the TV/Phone bill charge, the landlord confirmed that there is no term in the written tenancy agreement, signed by both parties, that sets out the requirement for the tenant to pay for this service, as this term was agreed to with the tenant by text message after the start of the tenancy. As such, I do not find sufficient evidence that the agreed upon terms of the signed, written tenancy agreement required the tenant to pay for this service. Therefore, I decline the landlord's claim for this item.

Wall Repair and Painting

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the condition inspection report, photographic evidence and receipts submitted by the landlord in support of her claim, I find that there is sufficient evidence that the

tenant failed to leave the rental unit undamaged other than for reasonable wear and tear. As such, I find that the landlord has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. I find that the landlord has provided itemized receipts for the cost of paint and painting supplies, but that she failed to provide a receipt setting out the cost of labour at an hourly rate for the wall repair and painting. I have only considered the clearly itemized receipts for the cost of paint and painting supplies as the landlord is required to establish the actual amount of any claimed costs and demonstrate that this is a mitigated cost.

Therefore, I find the landlord is entitled to a monetary award of \$67.89 for the claimed cost of paint and paint supplies, and I decline the landlord's claim for the painting and wall repair labour costs.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$5,967.89. I find that the tenant extinguished his rights to claim against the security deposit by failing to participate in the move-out condition inspection of the rental unit. Further the tenant has still not provided the landlord with his forwarding address in writing, as the landlord was only able to obtain the tenant's address of residence from the police.

The landlord's Application for Dispute Resolution seeks to retain the tenant's security deposit of \$1,475.00 in partial satisfaction of her claim for compensation.

The landlord continues to retain the tenant's security deposit of \$1,475.00. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$5,967.89, against the tenant's deposits of \$1,475.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

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

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$4,592.89.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$5,967.89
Recovery of the filing fee from the tenant	\$100.00
LESS: Security deposit held by landlord	(\$1,475.00)
Total Monetary Order in Favour of Landlord	\$4,592.89

Conclusion

I order the landlord to retain the \$1,475.00 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$4,592.89 in full satisfaction of the remaining amount of loss owed, and to recover the landlord's 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 06, 2020

Residential Tenancy Branch