



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL, MNRL, MNDL**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for rent pursuant to section 67; and
- A monetary order for damages pursuant to section 67.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was determined. The tenant acknowledged service of the landlord's Application for Dispute Resolution package and the landlord acknowledged service of the tenant's evidence package. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to compensation?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on June 26, 2018 with rent set at \$2,500.00 per month, payable on the first day of each month. Utilities were not included in rent. A security deposit and a pet deposit were collected and returned at the end of the tenancy. The fixed term was to end on July 1, 2019 and there is an addendum to the tenancy agreement which states:

The tenant agrees to vacate the premises no later than noon on July 1 2019, unless agreed to another date by both parties (minimum two months notice prior to July 1 2019).

The landlord provided the following testimony. The landlord testified that he entered into the fixed term tenancy with the tenant on the understanding that he would have the financial stability to collect rent for an entire year without having to find a new tenant. This tenant advised her that she had just sold her house, had lots of cash and would be a good tenant for the year. Based on this assumption, the landlord left the country.

The landlord testified that when the tenant first arrived, she asked him about the wood stove and the landlord advised her it was not useable. The advertisement for the suite indicated it was electric heat, no mention of the wood stove. When he was in Canada in September, the tenant once again asked him about the stove, saying she was concerned about a high electricity bill in using the electric heat. The landlord testified he invited her to call a wood stove inspection company which she did, however the following month, the tenant deducted the cost of the inspection off the rent. The landlord testified he never agreed to pay for the inspection and he's not willing to pay for it. He seeks \$175.00 as compensation.

On February 26th, the landlord received an email from the tenant advising him that she is giving him two months' notice of ending the tenancy on April 30th. Emails were sent back and forth between the parties regarding the clause in the addendum and each party's understanding of what it meant. Copies of the email exchanges were provided as evidence by the landlord. The landlord seeks compensation until July 1, 2019 representing the two months left on the fixed term tenancy agreement. The landlord testified that he hired an associate, "L" to screen new tenants and do everything required to find a new tenant while the landlord was overseas. A new tenant was found, and that tenancy commenced mid-June 2019.

When the tenant left, there was an outstanding water bill for \$120.05. During the hearing, the tenant agreed that she is responsible for paying this bill.

Lastly, the landlord claims for damage to the hardwood floors he had installed just prior to the tenant's move in and for damage to the lawn caused by the tenant's dog. Photos of the damages, taken by the property manager sometime in late April/early May and sent to the landlord by social messaging were provided as evidence. The landlord testified that the dog didn't scratch the hardwood floors, it appears to be damage caused by dragging of furniture. To repair the damage, the landlord will need to strip, sand, and revarnish the floors. The tenant's dog dug holes in the lawn which requires re-seeding. The landlord estimates it would cost \$500.00 to repair the floors and the lawn.

The landlord testified that a condition inspection report was not conducted with the tenant at the commencement of the tenancy. "L", the person he asked to manage his property went to the property on the last day of the tenancy to retrieve the keys and inspected it with the tenant present. "L" later sent the landlord photos of the damaged floors and lawn.

The tenant provided the following testimony. "L", saw the damage to the lawn by the tenant but was told by "L" not to worry about it. Nothing was brought to the tenant's attention by "L" who told her the condition of the rental unit was good and that she wouldn't even know what to take pictures of to show the landlord. There was no condition inspection report presented to her to review or sign on the day she returned the keys.

Regarding the chimney inspection: there were previous deficiencies in the home that were dealt with by the landlord. If things needed to be purchased for the property, the landlord asked the tenant to go ahead and do it and she would be reimbursed. This includes purchasing a new washer and dryer, fixing a dishwasher, oven and BBQ. Text threads between the parties were provided by the tenant. Based on the past experiences, she doesn't understand why the chimney quote is an issue. The tenant testified that the chimney technician advised her that all the heat inside the house is being sucked up the chimney from the interior because the wood stove surrounding is not properly closed off. The tenant purchased insulation and put it around the wood stove herself to stop the draft up the chimney.

The tenant was unaware of any damage to the wood floors and questioned the landlord as to where the photos provided were taken. The tenant testified there was no damage done to the floors while she was living there and if it was, it's normal wear and tear to be expected.

Regarding the landlord's claim for rent, the tenant testified that she is a real estate agent and knows the local rental market conditions well. After she gave the landlord the notice to end tenancy, she offered the landlord free use of her company's professional services to find a new tenant and screen them for suitability. She never got a response back from the landlord. The tenant testified that vacancy rates were at an all time low in the location of the rental unit and that her office could have found a new tenant right away.

The tenant had been a landlord herself for 15 years prior to becoming a tenant, and when she signed the tenancy agreement and addendum, she didn't understand the clause about the 2 month notice. She understood it meant she had to give 2 months notice to vacate and did not understand it meant she was committing to one year.

Analysis

Section 7 of the *Act* states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, the landlord seeks \$120.05 as outstanding utilities, which the tenant has acknowledged is her responsibility. In accordance with section 67, the landlord is entitled to this portion and is awarded \$120.05.

Second, the landlord seeks \$175.00 for a chimney inspection deducted from the rent by the tenant. Section 26 of the *Act* says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a

portion of the rent. Section 33(5) provides a tenant the ability to deduct amounts paid for emergency repairs after certain conditions are met; however I find that the inspection of the chimney does not fall under the category of an emergency repair. Likewise, despite the establishment of what the tenant believes to be an implied consent to get the inspection done and deduct the cost from rent afterwards, I find the tenant did not have any pre-established right to deduct any portion of the rent. The tenant has breached section 26 of the *Act*, and I award the landlord \$175.00 as unpaid rent.

Compensation for ending a fixed term tenancy

Residential Tenancy Policy Guideline PG-5 [Duty to Minimize Loss] provides guidance to landlords and tenants regarding ending fixed term tenancies.

Claims for loss of rental income

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.

I find that in finding a new tenant for mid-June of 2019 to be indicative of the landlord mitigating his losses. I find that the notice to end tenancy provided by the tenant is a proper notice that complies with section 52 of the *Act*, however is contrary to section 45(2)(b) which states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Despite the tenant's position that the rental market in the locale where the rental unit is located is tight, the policy guideline is clear, the landlord is under no obligation to rent the unit out earlier than the date specified in the tenancy agreement.

The other argument presented by the tenant is that she didn't understand the clause in the addendum to the tenancy agreement that states *The tenant agrees to vacate the premises no later than noon on July 1 2019, unless agreed to another date by both parties (minimum two months notice prior to July 1 2019)*. I find this term to be unambiguous. Both parties must agree to any date other than July 1, 2019 with 2

months notice given in any event. Clearly, the landlord didn't agree to this earlier date. I find the tenant has breached section 45(2)(b) of the *Act* by giving the landlord a notice to end tenancy effective on a date earlier than the date specified on the tenancy agreement. The landlord is awarded \$5,000.00 in accordance with section 67 of the *Act*.

Landlord's claim for damage to the wood floors and lawn

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. A condition inspection report provides the parties and the arbitrator with an idea of the state of the rental unit at the commencement and end of the tenancy and allows the parties and the arbitrator to determine the difference between the two. No condition inspection report signed by the parties at the beginning and end of the tenancy was produced for this hearing. Without this document, proving there is a difference in the two conditions and thereby proving there was damage sustained to the rental unit or the residential property is difficult for the landlord.

I find that the landlord has not provided sufficient proof to satisfy me that there was damage sustained to the residential property or rental unit or that the damage was beyond normal wear and tear if it were. For these reasons, the landlord's claim for damages is dismissed.

As the majority of the landlord's claim was successful, the landlord's filing fee of \$100.00 will be recovered.

Item	Amount
Outstanding utilities	\$120.05
Chimney inspection deducted from rent	\$175.00
2 months rent to July 1, 2019	\$5,000.00
Filing fee	\$100.00
Total	\$5,395.05

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,395.05**.

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: April 29, 2020

Residential Tenancy Branch