



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNDLS MNDCLS 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* (the Act) for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord agent GM (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 24, 2019 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail the address provided by the tenant. A registered mail tracking number was provided and has been included on the style of cause for ease of reference. According to the online Canada Post registered mail tracking website, the tenant refused the registered mail package on December 31, 2019. The Act does not permit refusal of service, and as a result, I deem the tenant served on December 31, 2019, the day the tenant refused the registered mail package. In addition, I find this application to be unopposed by the tenant as I find the tenant was duly served on December 31, 2019 and did not attend the hearing.

Preliminary and Procedural Matter

The landlord confirmed the email address for the parties at the outset of the hearing and the agent stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to the tenant at the email address provided.

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 security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the fixed-term tenancy agreement was submitted in evidence. The tenancy began April 1, 2019 and was scheduled to revert to a month to month tenancy after March 31, 2020. The tenant paid a security deposit of \$787.50 and a pet damage deposit of \$787.50, which have accrued no interest and which the landlord continues to hold.

The landlord is seeking a monetary claim of \$5,175.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning costs	\$200.00
2. January 2020 loss of rent and parking	\$1,625.00
3. February 2020 loss of rent and parking	\$1,625.00
4. March 2020 loss of rent and parking	\$1,625.00
5. Filing fee	\$100.00
TOTAL	\$5,175.00

Regarding item 1, the agent referred to the Condition Inspection Report and photo evidence, which the agent stated supports that \$200.00 in cleaning was required after the tenant vacated the rental unit. The photos show a rental unit that was not left reasonable clean at the end of the tenancy.

Regarding items 2 to 4, the agent testified that on December 16, 2019, the landlord deemed the rental unit abandoned by the tenant. The tenant provided no written notice that they would be vacating the rental unit. The agent provided a list of 10 popular websites that the rental unit was advertised on starting in January 2020, and once the cleaning was completed. The agent stated that all advertisements are renewed monthly and cost the landlord a monthly expense. The monthly advertisement costs are not being claimed by the landlord. The landlord is claiming for loss of rent and parking fees for the months of January, February and March of 2020 as the landlord was unable to secure a new tenant by the end of March 2020. In addition, the monthly tenancy agreement indicates that \$1,575.00 in rent plus \$50.00 parking fees per month is due during the tenancy.

In addition, the landlord is seeking the cost of the filing fee and authorization to retain the combined deposits of \$1,575.00, comprised of \$787.50 for the security deposit and \$787.50 for the pet damage deposit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the amount of **\$5,175.00**, which includes the recovery of the cost of the filing fee pursuant to section 72 of the Act in the amount of \$100.00 as the landlord's application is successful. I have considered the undisputed testimony of the agent and that the application was unopposed by the tenant.

I find the tenant breached section 26 of the Act by failing to pay \$1,625.00 for rent and parking for January, February and March of 2020. I also find that section 45(2) of the Act applies and states:

Tenant's notice

45(2) A tenant may end a fixed term 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,

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) 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.**
[Emphasis added]

Based on the above, I find the earliest the tenant could end the tenancy was March 31, 2020 and that by breaching the fixed term tenancy by vacating the rental unit on December 16, 2019, the tenant is responsible for the remainder of the rent and parking owed for the fixed-term tenancy.

I also find that the photo evidence and inspection reports support that the tenant breached section 37 of the Act, which requires the tenant to leave the rental unit in a reasonably clean condition, which I find the tenant failed to do. Therefore, I find the landlord is owed the cleaning costs as claimed.

I authorize the landlord to retain the tenant's full combined deposits of **\$1,575.00**, in partial satisfaction of the landlord's **\$5,175.00** 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 **\$3,600.00**. 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.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$5,175.00. The landlord has been authorized to retain both deposits totalling \$1,575.00 to offset their monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing by the tenant to the landlord of \$3,600.00.

The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to the landlord and the tenant.

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: May 26, 2020

Residential Tenancy Branch