



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for a monetary order for compensation for monetary loss or other money owed, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on December 18, 2019, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants were duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for compensation for my monetary loss or other money owed?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on July 15, 2017, as a five and a half month fixed-term tenancy rolling into a month-to-month tenancy at the end of the initial fixed-term. The rent increase form shows that the rent in the amount of \$1,230.00 and a \$30.00 parking fee was to be paid by the first day of each month, and the Landlord had been given a \$600.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement and rent increase form into documentary evidence.

The Landlord testified that they received the Tenants' notice to end the tenancy on November 5, 2019, which stated that they would be moving out as of November 30, 2019. The Landlord testified that they were able to secure a new renter for the rental unit for December 15, 2019. The Landlord is requesting a monetary order for the loss of rental and parking income between December 1 -14, 2019, in the amount of \$555.48 for rent and \$13.55 in parking fees.

The Landlord testified that the Tenants moved out of the rental unit on November 30, 2019, in accordance with their notice but that they had returned the rental unit in an unclean and damaged state. The Landlord provided a copy of the move-in/move-out inspection (the "inspection report") and 55 pictures into documentary evidence.

The Landlord testified that the carpets had not been cleaned and that the entire rental unit required additional cleaning at the end of this tenancy. The Landlord also testified there had been several panels missing from the window blinds, and that they had to purchase new replacement panels for the rental unit.

The Landlord testified that when they moved the fridge for cleaning, they discovered cockroaches in the rental unit and that a professional had to be brought in for extermination services.

The Landlord is requesting \$90.00 for carpet cleaning, \$240.00 in cleaning cost, \$47.25 for cockroach treatment, and \$90.00 for window blind repair at the end of tenancy. The Landlord provided four invoices for the cleaning and repairs into documentary evidence.

The Landlord has also requested the recovery of their costs to unclog a drain in the rental unit during the tenancy. The Landlord testified that there was large hair clog in the bathroom drain that required a professional plumber to remove during the tenancy. The Landlord testified that due to the number of curves in the drain pipes and the location of the pipes, the plumber had to cut a hole in the wall/ceiling of the neighbouring unit to access the drain, and that due to this the plumbing repair took approximately five hours to complete. The Landlord is requesting to recover \$614.45 in plumbing cost from the Tenants. The Landlord submitted the plumbing invoice into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that the Tenants served the Landlord with notice to end their tenancy on November 5, 2019. I also accept that the Tenants moved in accordance with their written notice, on November 30, 2019.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

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

Based on when the Landlord received the Tenants' notice, I find that this tenancy could not have ended, in accordance with the *Act*, before December 31, 2019.

The Landlord is requesting \$555.48 in lost rental income and \$13.55 in lost parking income for the first fourteen days of December 2019, due to the Tenants' short notice to end the tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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.

I find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without providing sufficient notice. I accept that the Landlord's testimony that it took them until mid-December 2019 to secure a new renter for the rental unit, and that they suffered a loss of rental income and parking income for the first half of December 2019 and that they have proven the value of that loss. Accordingly, I award the Landlord the recovery of \$555.48 in lost rental income and \$13.55 in lost parking income for the first fourteen days of December 2019.

The Landlord has also claimed for compensation in the amount of \$330.00 for cleaning at the end of this tenancy, consisting of \$90.00 in carpet cleaning and \$240.00 for cleaning. I have reviewed the inspection report, and I find the inspection report to be the creditable account of the condition of this rental unit at the end of this tenancy. I accept the testimony of the Landlord supported by the inspection report that the Tenants had returned the rental unit in an unclean state at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

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, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned and that the Landlord has submitted sufficient evidence to support the value of their cost to clean the rental unit. Therefore, I award the Landlord the recovery of their full cleaning cost, in the amount of \$330.00.

As for the Landlord's claim for the costs for replacing missing panels from the window blinds, in the amount of \$90.00, I noted that it was not recorded on the move-out that panels had been missing at the end of this tenancy. Accordingly, I find that the inspection report does not support the Landlord's claim for missing window blind panels at the end of this tenancy.

I have also reviewed the photographic evidence submitted into documentary evidence by the Landlord and note that there is one picture that does show missing panels from a set of window blinds. However, there was no picture provided to show the condition of the window blinds at the beginning of this tenancy to compare. In the absence of a photo to compare with, I am unable to determine from the photographic evidence if there had been a change in the condition of the window blinds during this tenancy. Consequently, in the absence of sufficient supporting evidence to substantiate their claim, I must dismiss the Landlord's claim to recover their cost for replacement panels for window blinds, without leave to reapply.

The Landlord has also claimed for the recovery of their costs for cockroach treatment in the amount of \$47.25 and a plumbing repair in the amount of \$614.45. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

Landlord and tenant obligations to repair and maintain

32 (3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

I have reviewed the totality of the Landlord's documentary evidence and testimony provided during these proceedings, and I find that the Landlord has not provided sufficient evidence to satisfy me, that the Tenants had caused damage to the rental unit that resulted in the need for cockroach treatment and the plumbing repair. In the absence of sufficient evidence to support their claim, I must dismiss the Landlord's claim for the recovery of their costs for cockroach treatment and a plumbing repair without leave to reapply.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$399.00; consisting of \$555.45 in lost rental income for December 2019, \$13.55 in lost parking income for December 2019, \$90.00 for carpet cleaning, \$240.00 for cleaning the rental unit, and \$100.00 to recover the filing fee for this hearing, less \$600.00 in the security deposit the Landlord is holding for this tenancy.

<u>Landlord's Claim Items</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Dec Rent 1st -14th	\$555.45	100%	\$555.45
Dec Parking 1st - 14th	\$13.55	100%	\$13.55
Carpet Cleaning	\$90.00	100%	\$90.00
Suite Cleaning	\$240.00	100%	\$240.00
Cockroach Treatment	\$47.25	0%	\$0.00
Blind Repair	\$90.00	0%	\$0.00
Unclog Drain	\$614.45	0%	\$0.00
Awarded			\$899.00
Filing fee			\$100.00
			\$999.00
Security deposit			-\$600.00
Due			\$399.00

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$399.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: May 19, 2020

Residential Tenancy Branch