



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a monetary order for damage or compensation under the Act in the amount of \$1,400.00 (for rental income in December 2019);
- a monetary order for rent owing in the amount of \$1,400.00 (for rental income in January 2020);
- a monetary order for damages for the Landlord in the amount of \$1,365.00, retaining the security deposit to apply to the claim; and
- recovery the \$100.00 cost of his Application filing fee.

An agent for the Landlord, G.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served both Tenants with the Notice of Hearing documents in person on December 13, 2019. The Agent also said that on May 3, 2020, he served the Tenants in

person with the documentary evidence that he uploaded to the RTB. I find that the Tenants were deemed served with the Notice of Hearing documents and evidentiary submissions in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent gave me his email address in the hearing. In the Application, the Agent provided the Landlord's mail and email addresses, and the Tenants' forwarding address. The Agent confirmed his understanding that the Decision would be sent to both Parties in this manner, and that any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Agent said that the Tenants moved into the rental unit on March 1, 2017. He said the Parties signed a subsequent, fixed-term tenancy agreement on February 1, 2019, which ran to January 31, 2020. The Agent said that the Tenants paid the Landlord a monthly rent of \$1,400.00, due on the first day of each month, and that the Tenants paid the Landlord a security deposit of \$675.00 and no pet damage deposit. The Agent said that the Parties did not do a move-in inspection of the condition of the rental unit at the start of the tenancy, and no inspection at the end of the tenancy.

Unpaid Rent Owing → \$2,800.00

The Agent said that on October 22, 2019, the Tenants gave the Landlord a written notice to end the tenancy with an effective vacancy date of November 30, 2019, despite there being a fixed term tenancy agreement. The Landlord seeks recompense for the months that the rental unit remained unrented, until the end of the fixed term lease. The Agent said that the rental unit was re-rented as of March 15, 2020.

The Landlord's attempts to re-rent the rental unit included hanging a sign in front of the residential property and advertising on a free, international, online advertising platform. The Agent said that it was hard to rent for December, as the response to the advertising

was slow in November and December 2019. The Agent also said that access to the unit for showings was not easy. He said the Tenants were reluctant to show it at times, saying it was a mess or that it could not be shown for other reasons.

Repainting Rental Unit → \$1,365.00

The Agent said that the rental unit was a house that had been freshly painted in February 2017, the month before the tenancy began. The Agent said the Landlord was required to have holes in the walls fixed and then have the unit freshly painted. He submitted an invoice setting out the cost to repaint the rental unit as \$1,300.00 plus \$65.00 GST.

Analysis

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

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 7 of the Act states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Policy Guideline #16 sets out that damage or loss is not limited to physical property only, but also includes less tangible costs, such as loss of rental income that was owing under a tenancy agreement.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, regulation or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Policy Guideline #5 states that where a party breaches a term of the tenancy agreement or the Act or regulation, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is commonly known as the duty to minimize the loss. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be reimbursed for a loss that could reasonably have been avoided. The duty to

minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be “reasonable” in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss or incur excessive costs in the process of mitigation. If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Unpaid Rent Owing

Section 45(2) of the Act states that a tenant may end a fixed term 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]

In this case, I find that the Tenants ended a one-year, fixed term tenancy two months early, contrary to section 45(2) of the Act and the tenancy agreement. I find that this breach deprived the Landlord of \$1,400.00 in rental income for each of December 2019 and January 2020. Pursuant to sections 7 and 67 of the Act, I find that the Tenants are required to compensate the landlord for this loss of rental income to the end of the term in the tenancy agreement.

However, the Landlord also had a duty to minimize that loss by re-renting the unit as soon as possible. I find that the Landlord started to advertise for new tenants in November 2019, as well as hanging a for-rent sign in front of the residential property. I find that the Landlord did what was reasonable in the circumstances, despite having some difficulty showing the unit, due to the Tenants’ unwillingness to comply with the Landlord’s request for showings, at times. As a result, I do not decrease the Landlord’s claim for recovering rental income from the Tenants, due to a failure on the Landlord’s part to minimize the damage.

Based on the undisputed evidence before me overall, I find that the Landlord is entitled to recovery of two months’ rental income at \$1,400.00 per month for a total award of **\$2,800.00**.

Repainting Rental Unit

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the rental unit had been painted in February 2017; therefore, at the end of the tenancy it had one year or 25% of its useful life left.

Without a condition inspection report we cannot compare the condition of the rental unit at the beginning of the tenancy to that at the end. However, the undisputed evidence before me is that the rental unit had been freshly painted at the start of the tenancy and according to PG #40, it was approximately 75% due for a new coat of paint and touch-ups at the end of the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

In the case before me, I find the Landlord was eligible for recovery of 75% of the cost of the repainting of the unit, or \$1,023.75. Without evidence to the contrary, I award the Landlord with recovery of **\$1,023.75** from the Tenants.

Given that the Landlord was predominantly successful in this Application, I also award

him with recovery of the \$100.00 Application filing fee. The Landlord is granted a total monetary order of **\$3923.75**.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' \$675.00 security deposit in partial satisfaction of the Landlord's monetary claim.

	Item Claimed	Amount Awarded
1.	Unpaid rent owing	\$2,800.00
2.	Repair and painting rental unit	\$1,023.75
3.	Application filing fee	\$100.00
	Sub-total	\$3,923.75
	Less security deposit	(\$675.00)
	Total monetary order	\$3,248.75

The Landlord is authorized to retain the Tenants' \$675.00 security deposit in partial satisfaction of the monetary award. The Landlord is granted a Monetary Order for the remaining amount of **\$3,248.75** from the Tenants in satisfaction of the remainder owing by the Tenants to the Landlord.

Conclusion

The Landlord is successful in his claim for recovery of lost rental income from the Tenants for their having ended the fixed term tenancy earlier than the end date set out in the tenancy agreement in the amount of \$2,800.00. The Landlord is also successful in recovering 75% of the cost of having the rental unit walls repaired and painted in the amount of \$1,023.75. Finally, the Landlord is awarded recovery of the \$100.00 Application filing fee for a total award of \$3,923.75.

The Landlord is authorized to retain the Tenants' \$675.00 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order in the amount of **\$3,248.75** for the remainder owing by the Tenants to the Landlord.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: June 9, 2020

Residential Tenancy Branch