



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid and loss of rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into three different fixed term tenancy

The first fix term began in 2018 and expired in 2019. Rent in the amount of \$2,100.00 was payable on the first of each month. The second fixed term began in May 1, 2019

and was to expire on April 30, 2020. Rent in the amount of \$2,250.00 was payable on the first of each month. The third fixed term agreement was to begin on May 1, 2020 and expire April 30, 2021. Rent in the amount of \$2,350.00 was payable on the first of each month. The tenant paid a security deposit of \$1,175.00. The tenancy ended on March 31, 2020.

At the outset of the hearing the landlord withdrew their claim for process serving fees.

The landlord claims as follows:

a.	Unpaid rent for April 2020	\$2,250.00
b.	Loss of rent for May 2020	\$2,350.00
c.	Different between two rents	\$1,800.00
d.	Labour for cleaning and repairs total 13 hours	\$1,175.00
e.	Materials for repairs	\$ 89.83
f.	Filing fee	\$ 100.00
	Total claimed	\$7,764.83

Unpaid rent for April 2020

At the outset of the hearing the tenant agreed they did not give proper notice to end the tenancy and that they agree to pay rent for April 2020.

Loss of rent for May 2020 and difference between two rents

The landlord's agent testified that the tenant gave notice to end the tenancy on March 31, 2020 and vacated on the same date. The landlord's agent testified that they started advertising the rental unit on one popular website for rent on April 1, 2020 at the rate of \$2,350.00 as that was the amount of rent listed in the new tenancy agreement that was effective May 1, 2020.

The landlord's agent testified that they then listed the premise one week later or multiple sites and on April 16 the rent was lowered to \$2,300.00, again on April 19, 2020 to \$2,250.00 and again on May 5, 2020 to the amount of \$2,200.00.

The landlord's agent testified that they had scheduled multiple showings; however, some of the potential renters did not show up. The agent stated that due to the state of emergency it was more difficult to find a tenant.

The landlord's agent testified that on May 7, 2020 they found a new renter and their tenancy commenced on June 1, 2020. The agent stated that as a result the rental unit was empty for the month of May 2020. The landlord seeks to recover loss of rent for May 2020, in the amount of \$2,350.00.

The landlord's agent testified that the tenant's rent commencing May 1, 2020 was the amount of \$2,350.00 and the new renter's rent was the amount of \$2,200.00 the landlord seeks to recover the difference between the two rents of \$150.00 for the remainder of the tenant's lease which was 11 months.

Counsel submits that the landlord was not allowed to increase the rent for the fixed term tenancy over the allowable amount. Counsel submits that the rent was \$2,100.00 when the tenancy commence and the rent at the years end increased by \$150.00, which the maximum rent increase allowed was \$52.50. Counsel submits the rent increase does not comply with the Act and the tenant is entitled to recover the illegal increase of \$150.00 per month of the 11 months it was paid, which is the amount of \$1,650.00.

The landlord's agent argued that although they now recognize the rent increase was not done correctly; however, the tenant should not be entitled to recover the increase because they were operating the unit as an Airbnb.

The tenant deny they were operating a commercial business.

Cleaning and Damages

The landlord's agent testified that the tenant did not properly clean the rental unit at the end of the tenancy and that the landlord spent approximately six hours cleaning. The agent stated that they have provided some photographs to support the rental unit was not cleaned.

The landlord's agent testified that the tenant also caused damage to two large blinds, which they had to spend considerable time to re-string the blinds. The agent stated that the towel bar, light fixture was broken, and the counter top chipped.

The landlord's agent testified that they believe the receipt the tenant provided for cleaning is false as it dated after the tenancy ended.

The tenant through their counsel testified that the string to the blinds were broken when the tenancy commenced, and the landlord was notified.

Counsel submits that the landlord did not conduct a move-in condition inspection report and has not met the burden of proof that the damage was caused by the actions or neglect of the tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

In this case, the landlord is seeking to recover loss of rent. Since the issue of the rent increases that do not comply with the Act was raised, I must also consider if the tenant has overpaid rent as the Act allows this amount to be deducted from the rent.

The landlord's agent at the hearing acknowledged they made a mistake on the issuing of the rent increase and wants the rent increase to apply because they allege the tenant was operating a commercial business. However, that is a separate issue and the only option to the landlord would have been to end the tenancy for cause. I find the rent increases did not comply with the Act and the rent reverts back to the amount of \$2,100.00, which was listed in the original tenancy. Therefore, I find the tenant over paid the rent in the amount of \$1,650.00.

I am satisfied that the tenant breached the fixed term agreement when they vacated the rental unit on March 31, 2020, as the earliest date the tenant could have legally ended the tenancy was April 20, 2021. The tenant agreed that they owe rent for April 2020. Therefore, I find the landlord is entitled to recover loss of rent for April 2020, in the total amount of \$2,100.00.

I am further satisfied that the landlord made reasonable efforts to re-rent the premise as they advertise the rental unit commencing April 1, 2020 at the amount that was listed in the tenant's tenancy agreement and then subsequently lowered. The landlord was unable to find a new renter until May 7, 2020 and the new tenancy was to begin on June 1, 2020.

I accept that the landlord was advertising the premise for the amount of \$2,350.00 this was the amount that was listed in the new fixed term tenancy. Although that rent increase in the new fixed term agreement did not comply with the Act, I find the landlord had the right to rely upon that agreement when advertising the unit. This was not an issue until after the tenancy ended. The tenant could have addressed this issue in 2019, when the first rent increase was given, if they truly felt it was unfair.

Further, I do not find the amount unreasonable taken into account that the landlord was entitled to rent increases for 2019 and 2020. I find the different is not a significant amount. Also, there were showing and interest in the subject property; however, I find it reasonable to conclude that due to the current state of emergency that the potential new renters were limited as the government was discouraging the movement of people, which was more likely than not the reasons for reducing the rent. Therefore, I find the landlord is entitled to recover loss of rent for May 2020, in the amount of \$2,100.00.

The landlord is claiming the difference between the two rents. While I accept the landlord would be entitled to recover the loss in normal circumstances; however, I have determined rent was the amount of \$2,100.00 and the new renter is paying \$2,200.00, I find the landlord has not suffered a loss. Therefore, I dismiss this portion of the landlord's claim.

Based on the above, I find the landlord is entitled to recover loss of rent in the amount of \$4,200.00. However, I must deduct the overpayment of rent of \$1,650.00. This leaves a balance due to the landlord in the amount of **\$2,550.00**.

Cleaning and Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

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

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I am not satisfied the landlord has met the burden of proof for cleaning. The landlord is claiming six hours for cleaning; however, the photographs show very minor deficiencies which does not support it would take six hours to clean. Further, the Act does not state it has to be perfectly clean, just reasonable. It is not uncommon for landlords to bring the unit to a higher standard than required by the Act.

Further, I am not satisfied the landlord has met the burden of proof for the repairs. The landlord is claiming seven hours for work and repairs. However, I find the repairs in nature were minor, such as re-stringing the blinds. While the string may have been broken, this does not prove it was from neglect of the tenant, as this simply could have been reasonable wear and tear and it was the landlord responsibility to repair.

Furthermore, the landlord did not conduct a move-in inspection and the tenant denied they cause damage to the rental unit. There was no documentary evidence provided by the landlord to prove the condition of the rental unit at the start of the tenancy.

Based on the above, I dismiss the landlord's claim for damages.

I find that the landlord has established a total monetary claim of **\$2,650.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of \$1,175.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,475.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: July 15, 2020

Residential Tenancy Branch