



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXTRUM HOLDINGS
INC and [te name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFL, MNRL, MNDL, MNDCL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any submissions from the tenants in this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that on June 10, 2020, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. The landlord provided the tracking information during the hearing, which were confirmed as received by the recipients. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with copies of the landlord's application and evidence on June 15, 2020, 5 days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This fixed term tenancy began on August 1, 2019, and was to end on July 31, 2020. The tenants moved out on March 1, 2020. Monthly rent was set at \$2,000.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$1,000.00. A previous hearing was held on March 10, 2020, and the Arbitrator allowed the landlord to retain the security deposit in satisfaction of their monetary claim in the March 12, 2020 decision.

The landlord is seeking compensation for the following losses associated with the tenancy:

Item	Amount
Loss of Rent for remainder of fixed term tenancy: March 1, 2020-July 31, 2020 (5 months x \$2,000.00)	\$10,000.00
Unpaid Utilities	504.60
Air Duct Cleaning	419.00
Rekeying (front and garage door)	404.25
Cleaning & repairs	2,137.59
Total Monetary Order Requested	\$13,465.44

The landlord testified that the tenants moved out before the end of the fixed-term tenancy. The landlord attempted to advertise and re-rent the home, but the home remains vacant. The landlord is seeking a monetary order for the loss of rental income due to the tenants' failure to comply with the *Act*.

The landlord is also seeking a monetary order for the unpaid utilities owed by the tenants. The landlord provided copies of the invoices in support of their claim.

The landlord testified that the tenants kept a pet cat, without the landlord's permission. The landlord is seeking reimbursement for the cost of air duct cleaning as a result of the tenants' decision to allow a cat into the home.

The landlord testified that the tenants failed to return any of the keys, and as a result the landlord suffered a loss associated with rekeying. The landlord submitted receipts for the loss.

The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition. Although the landlord confirmed that no move-in inspection report was completed, the landlord submitted photos as well as an estimate to repair the damage and clean the home. The landlord testified that due to the pandemic, the contractor had yet to perform the repairs, but the landlord undertook the painting, and submitted receipts for their losses.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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.

I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. The tenants moved out earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were unable to re-rent the suite despite their efforts to advertise and re-rent the suite.

I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the fixed-term, as is required by section 7(2) of the *Act*. Accordingly, I allow the landlord their monetary claim for loss of rental income in the amount of \$10,000.00 for the months of March 2020 through to July 2020.

I find that the landlord provided sufficient evidence to support that the tenants failed to pay the outstanding utilities for this tenancy. Accordingly, I allow the tenants a monetary order for the unpaid utilities.

I find the landlord provided undisputed testimony that the tenants failed to return the keys, and as a result the landlord suffered a monetary loss to rekey the doors. I allow the landlord's monetary claim for the rekeying of the doors.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although the landlord did not perform a move-in inspection, I find that the photographic and documentary evidence provided by the landlord supports that the tenants failed to leave the home in reasonably clean condition. I also accept the landlord's explanation for why they have suffered a delay in why they have been unable to retain the services of a contractor. I find that the photos depict a large amount of items left behind by the tenants, as well as the tenants' failure to properly clean the home, and as a result of the tenants' actions, they landlord was burdened with the task and cost of cleaning the home and dumping the abandoned items. I find the estimate provided by the landlord for cleaning and dumping to be reasonable, and accordingly, I allow the landlord a monetary order in the amount of \$450.00 for cleaning and \$150.00 for dumping of abandoned garbage.

Although I accept the landlord's testimony that the tenants allowed a cat into the home without their permission, I am not satisfied that the landlord had provided sufficient evidence to support why the duct cleaning was a necessary loss associated with the tenants' failure to comply with the *Act*. As stated above, the landlord must take reasonable steps to mitigate their loss, and in this case, I am not satisfied that the landlord had demonstrated why the duct cleaning was necessary or reasonable. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. As noted above, the burden of proof is on the applicant to support their claim. In this case, I find that the landlord failed to provide sufficient evidence to support when the home was last painted. As there is no way to ascertain whether the paint has exceeded its useful life, and in the absence of a move-in inspection, I find that the landlord has failed to meet the burden of proof to support their loss associated with the painting and damage to the walls. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I have considered the landlord's other monetary claims for damage to the home. Without a move-in inspection report, I find that there is no way to determine what the pre-existing condition of the home was, and what damage the tenants caused during this tenancy. I find that the landlord has not met the burden of proof to support this loss.

Accordingly, I am dismissing the remainder of the landlord's application for repairs without leave to reapply.

I allow the landlord to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$11,608.85 in the landlord's favour under the following terms:

Item	Amount
Loss of Rent for remainder of fixed term tenancy: March 1, 2020-July 31, 2020 (5 months x \$2,000.00)	\$10,000.00
Unpaid Utilities	504.60
Rekeying (front and garage door)	404.25
Cleaning	600.00
Filing Fee	100.00
Total Monetary Order	\$11,608.85

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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.

The remainder of the landlord's application is dismissed without leave to reapply.

The tenants' application is dismissed without leave to reapply.

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: August 10, 2020

Residential Tenancy Branch