



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the hearing package and evidence was sent to the tenant by registered mail on April 24, 2020. The landlord provided valid Canada Post tracking information as evidence of service. Based on the evidence I find the tenant was deemed served with the landlord's materials on April 29, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This fixed-term tenancy began in March 2019. Monthly rent was \$1,750.00 payable on the first of each month. The tenant also rented several parking spots at \$322.52 per month. A security deposit of \$875.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant abandoned the rental suite sometime in April, 2020 without providing written notice to the landlord of their intention to end the tenancy. The tenant failed to pay rent for the months of April and May 2020. The landlord submits that upon discovering the tenant had abandoned the rental suite they took immediate action by advertising the suite and finding a new occupant for June, 2020. The landlord seeks a monetary award in the amount of \$4,145.04 the equivalent of the unpaid rent and parking stall charges for two months.

The parties prepared a move-in condition inspection report which was submitted into evidence. The tenant did not participate in a move-out inspection as the tenant had abandoned the suite. The landlord completed the move-out inspection without the tenant and found some areas requiring cleaning and work. The landlord submits that the total cost of the work necessitated by the tenancy is \$150.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45(2) of the *Act* explains that a tenant may end a fixed-term tenancy by giving the landlord notice on a date not earlier than the date specified in the tenancy agreement and no earlier than one month after the date the landlord receives the notice.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss

that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

I accept the evidence of the landlord that there was a valid tenancy agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$1,750.00 by the first of each month. I further accept the evidence that there were additional agreements where the tenant rented parking stalls at a rate of \$322.52.

I find that the tenant breached the tenancy agreement by abandoning the rental unit and ending the tenancy prior to the fixed term and failing to pay rent and parking stall fees for the months of April and May, 2020.

I find that the landlord took reasonable steps in an effort to mitigate any losses and re-rent the unit. I accept the evidence of the landlord that despite their best efforts they incurred some rental income losses due to the tenant's abandonment of the property. I accept that the amount of the loss is \$4,145.04 and issue a monetary award in the landlord's favour accordingly.

I accept the landlord's evidence that the rental unit required some cleaning and work due to its state and that the cost of the work performed is \$150.00. I therefore issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,520.04. The tenant must be served with this Order as soon as possible. Should the tenant 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: August 18, 2020

Residential Tenancy Branch