



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$9,275.00 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, MG (agent) and tenant guarantor JW (tenant) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

There were no concerns raised regarding the service of documentary evidence. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the start of the hearing. The parties confirmed their understanding that the decision would be emailed to the parties. The monetary order will be emailed to the landlord for service on the tenants.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?

- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2019 and was scheduled to revert to a month to month tenancy as of August 31, 2020. Monthly rent was \$1,795.00 per month. Rent was due on the first day of each month. The tenants paid a security deposit of \$897.50, which the landlord continues to hold.

The landlord's monetary claim for \$9,275.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning unit	\$200.00
2. April 2020 rent	\$1,795.00
3. May 2020 rent	\$1,795.00
4. June 2020 rent	\$1,795.00
5. July 2020 rent	\$1,795.00
6. August 2020 rent	\$1,795.00
7. Filing fee	\$100.00
TOTAL	\$9,275.00

Regarding item 1, the parties reached a mutual agreement that the tenants could agree to compensate the landlord \$200.00 for cleaning of the rental unit. This mutual agreement was formed pursuant to section 63 of the Act, which I will address further below.

Regarding items 2 to 6, the landlord is seeking unpaid rent for April 2020 of \$1,795.00 and loss of rent for the remaining months of the fixed-term tenancy for the months of May through August 2020, inclusive. There was no dispute that the tenant vacated the rental unit and returned the rental unit keys on or about April 10, 2020. The tenant did not dispute that rent was not paid for April 2020 before the keys were returned. The tenant explained that due to COVID-19 the tenants moved back to Edmonton in a rush to avoid a stay in place order.

The agent was asked to present the landlord's evidence related to attempts to re-rent the rental unit. The agent stated that the rental unit has not been re-rented to date as it

is a very small unit, which is challenging to re-rent. The agent presented a Craigslist ad showing that a rental ad was posted on March 31, 2020 for the same amount of rent. A copy of the actual ad was not submitted in evidence by the landlord. The title of the ad that was posted states:

Water View! Water View! Studio with Storage - \$1,795

The remaining documents only show that the ad was posted March 31, 2020 and renewed in April.

Item 7 relates to the filing fee, which I will address later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – As noted above, the parties mutual agreed that the tenants would compensate the landlord the amount of **\$200.00** for cleaning of the rental unit pursuant to section 63 of the Act. As a result, I order the parties to comply with their binding mutual agreement made during the hearing. The parties were advised of the binding nature of this mutual agreement under the Act.

Items 2 to 6 - The landlord has claimed \$1,795.00 unpaid rent and loss of rent for the months of April, May, June, July and August 2020. In addition, section 45(2) of the Act, which applies and states:

Tenant's notice

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.

[Emphasis added]

Based on the above, I find the tenant breached section 45(2) by vacating the rental unit prior to August 30, 2020 without written permission of the landlord to end fixed-term tenancy. Section 7 of the Act also applies and states:

Liability for not complying with this Act or a tenancy agreement

7(2)A landlord or tenant **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.**

[Emphasis added]

In addition, part four of the test for damages or loss noted above states that the party making the application did what was reasonable to minimize the damage or loss. Given that the landlord failed to present the rental ad and any renewal ads beyond April and May 2020, I find the landlord has failed to comply with section 7 of the Act and part four of the test for damages or loss for loss of rent for the months of June, July and August 2020. Therefore, I dismiss the landlord's claim for June, July and August 2020 rent due to insufficient evidence, without leave to reapply. I find the landlord did meet the burden of proof for unpaid April 2020 rent of **\$1,795.00** and loss of May 2020 rent of **\$1,795.00**, and I grant those amounts as a result. The June, July and August 2020 portion of the landlord's claim is dismissed without leave to reapply, due to insufficient evidence.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$3,890.00**, comprised as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Cleaning unit	\$200.00
2. April 2020 rent	\$1,795.00
3. May 2020 rent	\$1,795.00
4. June 2020 rent	dismissed
5. July 2020 rent	dismissed
6. August 2020 rent	dismissed
7. Filing fee	\$100.00
TOTAL	\$3,890.00

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' full security deposit of \$897.50, which has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$2,992.50**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$3,890.00. The landlord has been authorized to retain the tenants' full security deposit of \$897.50, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$2,992.50. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenants.

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: August 28, 2020

Residential Tenancy Branch