



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-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 security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. Each party testified that they were in receipt of the materials and based on the testimonies I find all respective materials were served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord reduced their monetary claim by \$300.00 saying that the figure on the application was based on a quote and they have since calculated the actual amount of their loss. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as there is no prejudice in reducing the amount of the monetary claim, I amend the landlord's Application to decrease the monetary claim from \$4,137.00 to \$3,837.00.

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 their filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This fixed-term tenancy began in January, 2018 and was scheduled to end in 3 years. The monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and is still held by the landlord. The tenant gave written notice to end the tenancy on February 16, 2020 and vacated the rental unit at the end of April, 2020.

The parties prepared a move-out condition inspection report on April 30, 2020 and the tenant provided a forwarding address on that date. The parties did not agree on the assessment of damage to the rental unit and the tenant did not agree to any deduction from the deposit.

The landlord submits that the rental unit required painting and repairs to the ceiling due to the tenant painting the suite during the tenancy. The landlord submits that the total cost of the work was \$3,087.00 and submitted a quote for the work into documentary evidence. The landlord also submitted some photographs of the condition of the rental unit as evidence in support of the work undertaken.

The tenant disputes that the rental unit required any work and submitted numerous photographs of the condition of the suite.

The landlord says that they were unable to find a new occupant for the rental unit until August, 2020 and suffered rental income losses. The landlord says that they had an agreement with the tenant that they were entitled to retain the full amount of the security deposit for the early termination of the lease if the landlord was unable to find a new occupant for the suite by May 15, 2020. The landlord seeks a monetary award in the amount of \$750.00 for rental income losses.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenant provided a forwarding address in writing on the condition inspection report dated April 30, 2020. The landlord filed their application for

authorization to retain the deposit on May 11, 2020. Therefore, I find the landlord was within the statutory timelines to file their application.

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.

I find the landlord's evidence by way of the condition inspection report prepared at the end of the parties and the photographs submitted to be sufficient to demonstrate that the rental unit required some work to paint and repair the walls and ceiling. It is evident that the tenant's attempt to paint the suite was not done in a professional manner and that it is uneven, blotchy and paint has pooled in some areas where the walls meet the floors or ceilings. I find that the landlord has established that the cost of the repainting and ceiling work to be \$3,087.00. Accordingly, I issue a monetary award in the landlord's favour for that amount.

The landlord seeks an award for loss of rental income. 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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenant gave notice to the landlord to end the tenancy on February 16, 2020 and moved out on April 30, 2020. I note that neither party submitted a copy of the written tenancy agreement into evidence. Nevertheless, I accept the undisputed testimony of both parties that this was a fixed-term tenancy scheduled to end in 2021.

The landlord testified that they took efforts to attempt to re-rent the suite by posting advertisements and retaining a property management company but were unable to find a new occupant until August 2020. I find little evidence in support of the landlord's submissions. There are no advertisement postings or correspondence with prospective tenants. I find the landlord's testimony with no documentary evidence to be insufficient to demonstrate that any reasonable steps were taken in an attempt to mitigate their losses. I further find insufficient evidence to support the landlord's position that the tenant agreed that the landlord could retain the full amount of the deposit if a new occupant could not be located.

Based on the evidence, while I accept that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that any losses incurred are due to the tenant rather than the landlord's failure to take steps to mitigate their losses. I do not find it reasonable that the landlord was not able to find a new occupant after being provided over eight weeks' notice.

I find that any losses incurred by the landlord is attributable, not to the tenant, but the landlords' failure to take reasonable steps to find a new occupant. As such, I dismiss this portion of the landlord's application.

As the landlord's application had merit, I allow the landlord to recover their 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 \$2,437.00. 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: September 10, 2020

Residential Tenancy Branch