



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 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.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on September 19, 2020 by way of registered mail to the tenants' new address. The landlord testified that he was able to obtain the tenants' address by hiring a private investigator and skip tracer. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on September 24, 2020, five days after its registered mailing. The landlord testified that the tenants had never served him with any evidentiary materials, despite the fact that the tenants submitted evidence to the RTB for consideration. In light of the landlord's sworn testimony, and in light of the fact there is insufficient evidence to support that the landlord was served with the tenants' evidentiary materials in accordance with the *Act*, the tenants' evidence will be excluded for the purposes of this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on February 1, 2018, and was to end on January 31, 2020. Monthly rent was set at \$2,500.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,250.00, which the landlord still holds.

The landlord testified that he had returned from a trip on October 6, 2019 to discover that the tenants had abandoned the home. The landlord testified that he had never received written notice from the tenants that they would be moving out. The landlord testified that the doors were unlocked, the windows were open, and the heat was turned all the way up. The landlord testified that although he did perform a move-in inspection, he was unable to perform a move-out inspection with the tenants due to the nature that this tenancy had ended. The landlord submitted a copy of the inspection report in his evidentiary materials.

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

Item	Amount
Unpaid Rent for February 2018 through to October 2019	\$11,365.00
Loss of Rental Income for November 2019	2,500.00
Repairs and Cleaning	5,644.95
Compensation for loss wages, interest, and renting son's truck	2,175.50
Filing Fee	100.00
Total Monetary Order Requested	\$21,785.45

The landlord submitted a record of the unpaid rent for 2018 and 2019, detailing the rent payments made by the tenants. The landlord is seeking a monetary order in the amount of \$11,365.00 for the unpaid rent for this tenancy. The landlord testified that he was able to re-rent the home for December 1, 2019, and is also claiming loss of rental income for November 2019 due to the early end of this fixed-term tenancy.

The landlord testified that the tenants had abandoned the home, and failed to leave the home in reasonably clean and undamaged condition. The landlord submitted a copy of the receipts for the losses associated with repairs and cleaning associated with the tenants' failure to comply with the Act. The landlord submitted photos to show the condition of the rental unit at the end of the tenancy, as well as the move-in inspection report. As the tenants abandoned the property, no move-out inspection was completed with the tenants. The landlord is seeking a monetary order for reimbursement of the losses in the amount of 5,644.95.

The landlord also submitted a monetary claim in the amount of \$2,175.50 for "5% interest on \$19,509.95 \$800 for renting my sons truck for four days and four days of his wages \$500 my wages". The landlord testified that he suffered these losses due to the tenants' failure to comply with the Act, and is requesting reimbursement for these 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.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. 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. No applications for dispute resolution have been filed by the tenants in regards to this 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*.

I find further that the evidence shows that as a result of the tenants' early termination of this tenancy, the landlord suffered a rental loss. The evidence of the landlord is that he was able to re-rent the home for December 1, 2020. I am satisfied that the landlord had made efforts to mitigate the tenants' exposure to the landlord's monetary loss of rent for the remainder of this fixed-term tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$2,500.00 for the month of lost rental income due to the early termination of this tenancy.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the landlord submitted detailed evidence to support that the tenants failed to pay \$11,365.00 in outstanding rent for the months of February 2018 through to October 2019. On this basis, I allow the landlord's monetary claim of \$11,365.00 for outstanding rent for this period.

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. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with section 23 of the *Act* by performing a move-in inspection at the beginning of this tenancy. I find that the tenants had moved out without proper notice, or providing a forwarding address to the landlord, and therefore the landlord was unable to perform a proper move-out inspection. I find that the landlord supported his claims with receipts, photos, and invoices. Accordingly, I find the landlord is entitled to compensation in the amount of \$5,644.95 for the losses associated with the tenants' failure to leave the home in reasonably clean and undamaged condition.

I have considered the remainder of the landlord's monetary claims. As stated above, the burden of proof is on the applicant to support the value of their losses. I am not satisfied that the landlord had provided sufficient evidence to support that the remainder of the losses claimed in his application. On this basis, I dismiss the remainder of the landlord's monetary claim without leave to reapply.

As I find that this application has merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$18,359.95 in the landlord's favour under the following terms:

Item	Amount
Unpaid Rent for February 2018 through to October 2019	\$11,365.00
Loss of Rental Income for November 2019	2,500.00
Repairs and Cleaning	5,644.95
Filing Fee	100.00
Less Security Deposit Held by Landlord	-1,250.00
Total Monetary Order	\$18,359.95

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

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: December 24, 2020

Residential Tenancy Branch