



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-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 money owed or compensation 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

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

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, 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 month-to-month tenancy began on July 1, 2020, with monthly rent set at \$1,050.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$500.00, which the landlord still holds. Both parties confirmed that the tenant moved out on September 14, 2020.

The landlord is requesting a monetary order for lost rental income for the month of October 2020 in the amount of \$1,050.00 as well as compensation in the amount of \$250.00 for the tenant's failure to leave the home in reasonably clean condition. The landlord testified that the tenant did not give prior written notice that he was moving out. The landlord testified that she was able to find a short-term tenant for the month of October 2020 **for the second bedroom suite**, who paid her \$700.00, **but she still suffered a rental loss for the tenant's suite**. The landlord submitted photos to show that the tenant did not clean the rental unit when he had moved out, and despite being given the opportunity to return and clean the rental unit, he did not.

The tenant does not dispute that he had moved out without giving proper written notice. Both parties confirmed that there were issues that involved the tenant's mother, and the tenant had moved out. The tenant testified in the hearing that although he could have returned to clean the rental unit, he did not feel comfortable doing so.

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

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and

(b) 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 tenant moved out without giving proper notice as required by section 45 of the *Act*. I am satisfied that although the landlord attempted to mitigate her losses by re-renting the suite as soon as possible, she lost rental income due to the tenant's failure to give proper notice under the *Act*.

The rental premises consists of a two (2) bedroom furnished suite. The tenant had rented one of the two bedrooms in the basement suite, and although the landlord was able to rent the second bedroom on a short-term basis for \$700.00, the landlord still suffered a monetary loss in rental income in the amount of \$1,050.00 for the tenant's 1 bedroom suite. As stated in Residential Policy Guideline #3, "even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued." In light of the evidence before me, I find that the landlord is entitled to \$1,050.00 in lost rental income for the tenant's suite.

~~As the landlord was able to re-rent the rental unit for the month of October, and recover \$700.00 in rental income, I find that the landlord is entitled to a monetary order for the rent differential. Accordingly, I find that the landlord is entitled to \$350.00~~ **\$1,050.00** in lost rental income for the month of October 2020.

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 condition except for reasonable wear and tear.

I find that the tenant failed to leave the home in reasonably clean condition. Although the tenant testified that he felt uncomfortable returning, I find that the tenant had alternate options such as hiring a professional cleaner. I find that the tenant's non-compliance impacted the landlord's ability to re-rent the rental unit. I find the landlord's monetary claim for cleaning to be reasonable, and accordingly I allow the landlord's monetary claim of \$250.00 for cleaning.

I allow the landlord to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$500.00 In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of ~~\$200.00~~ **\$900.00** in the landlord's favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in partial satisfaction of their monetary award.

Loss of Rental Income for October 2020	\$1,050.00 \$350.00
Cleaning	250.00
Recovery of Filing Fee	100.00
Less Security Deposit Held by Landlord	-500.00
Total Monetary Award	\$200.00 \$900.00

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.

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: January 19, 2021

Residential Tenancy Branch

DECISION & MONETARY ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON JANUARY 28, 2021 AT THE PLACES INDICATED IN BOLD AND ~~STRIKETHROUGH~~ ON PAGES 2 , 3, and 4 OF THE DECISION AS WELL AS THE MONETARY ORDER.

Residential Tenancy Branch