



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MNR, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award;
- and
- to recover the cost of the filing fee.

The landlord attended the hearing; however, the tenant did not attend.

The landlord is required to serve the tenant with her application for dispute resolution. The landlord stated she served the tenant with her application for Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on October 22, 2020. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the

submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to keep the tenant's security deposit to use against a monetary award, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of December 1, 2019, a fixed term through November 30, 2020, monthly rent of \$1,800, due on the 1st day of the month, and a security deposit of \$900 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenancy ended on or about September 30, 2020.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim listed on her application was \$3,171. The breakdown of the claim was \$900 for loss of rent for October, \$1,950 for a total rent deficiency accumulated during the tenancy, \$300 for cleaning, \$9 for a FOB replacement, and \$12 costs for forwarding mail to the tenant.

The landlord's claim for October showed she deducted the tenant's security deposit of \$900, from the total monthly rent due of \$1,800.

In support of her application, the landlord testified to the following:

October 2020 rent –

The landlord said that she received the tenant's notice that he was vacating the rental unit on September 23, 2020 by the end of September. This short notice caused her to lose the rent revenue of \$1,800 for October 2020, as she had insufficient time to find a new tenant. The landlord submitted that the tenant also violated the fixed term tenancy agreement.

The landlord said she began advertising the rental unit immediately and was able to find a new tenant for November 1, 2020.

Rent deficiency –

The landlord submitted that the tenant failed to pay the full amount of rent for some months during the tenancy, for a total of \$1,950. The landlord submitted a worksheet showing the deficient monthly rent payments. The tenant owed \$300 for April, \$350 for June and \$1,300 for September, according the landlord.

Cleaning –

The landlord submitted that the tenant failed to properly clean the rental unit prior to vacating. The landlord said that the rental unit was very dirty, garbage was left behind, as well as containers of dog feces. The landlord submitted she spent approximately 10 hours in cleaning and that a reasonable amount to charge for her time was \$300.

Filed into evidence was the condition inspection report (CIR) and photographs of the rental unit and balcony.

FOB replacement –

The landlord submitted that the tenant failed to return the FOB and the replacement was \$9.

Mail forwarding –

The landlord said that the tenant did not have his mail forwarded, so she forwarded mail to him, at a cost of \$12.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section

67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

October 2020 rent –

Section 45(2) of the Act states that 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month that is not earlier than the fixed term.

In this case, the tenancy agreement was for a fixed term through November 30, 2020, and I find the tenant breached the agreement. I find the landlord submitted sufficient and uncontested evidence to show that she minimized her loss by finding a new tenant for November 2020. I, however, find it reasonable that the landlord would not have been in a position to find a new tenant for October 2020 with the short notice provided by the tenant on September 23, 2020.

Due to the tenant's breach of the tenancy agreement, I find the landlord has established a monetary claim for the loss of rent revenue for October 2020, in the amount of **\$1,800**.

Rent deficiency –

I find the landlord submitted sufficient and uncontested evidence to show that the tenant owed, but failed to pay the full amount of rent due under the written tenancy agreement during the tenancy.

I find the landlord has established a monetary claim of **\$1,950**.

Cleaning; FOB –

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant also must give the landlord all the keys or other means of access that are in the possession or control of the tenant.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

I find the landlord submitted sufficient and uncontested evidence to support that the rental unit was not left reasonably clean.

I have reviewed the landlord's photographic evidence along with the receipts and invoices for the amounts claimed. Upon review of the photographs, I find the costs claimed to be reasonable, considering the state of the rental unit.

I therefore find the landlord has submitted sufficient and uncontested evidence to support her monetary claim of **\$300** for cleaning and **\$9** for FOB replacement.

Mail costs –

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred such as mail costs. This was a choice made by the landlord, but not from a direct breach of the Act or tenancy agreement. I **dismiss** the landlord's claim for \$12.

As the landlord was successful in her application, she may recover the \$100 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit in partial satisfaction for a return of the monetary award.

Conclusion

I issue a monetary order of \$3,259.00 in favour of the landlord as follows:

ITEM	AMOUNT
1. Loss of rent for October 2020	\$1,800

2. Rent deficiency, April, June and Sep., '20	\$1,950
3. Cleaning	\$300
4. FOB replacement	\$9
5. Return of filing fee	\$100
6. <i>Less security deposit</i>	<i>(\$900)</i>
TOTAL	\$3,259

The landlord is provided with a Monetary Order in the above terms. Should the tenant fail to voluntarily fail to pay the landlord, the tenant must be served with this order for enforcement. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant is cautioned that costs of enforcement are subject to recovery.

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: February 12, 2021

Residential Tenancy Branch