Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL / MNSDS-DR / MNSDS-DR**

Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,009.29 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And two applications of the tenant, both of which seek the same relief:

- monetary order for $1,100 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:21 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The respondent to the tenant's applications and the owner of the corporate landlord applicant ("**HF**") attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that HF and I were the only ones who had called into this teleconference.

HF testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on October 23, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on October 28, 2020, five days after HF mailed it, in accordance with sections 88, 89, and 90 of the Act.
HF testified that she was not served with either of the tenant's application packages and was unaware that this hearing would also address applications of the tenant. This point is moot, however, as the tenant did not attend the application.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the tenant bears the onus to prove her claim. As she failed to attend the hearing, I find that she has failed to discharge her evidentiary burden to prove that she is entitled to the orders sought. Pursuant to Rule of Procedure 7.4, she (or her agent) must attend the hearing and present her evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

I dismiss her applications, without leave to reapply.

Hereinafter, I will refer to applicant corporate landlord as “the landlord” and to HF as “HF”.

Preliminary Issue – Jurisdiction

The landlord included a copy of a prior decision between the parties dated May 29, 2020. In this decision, the hearing for which the tenant also did not attend, the presiding arbitrator recorded the following submissions of HF regarding jurisdiction:

> [HF stated] the Act does not apply to the living accommodation or the relationship between the parties as this was shared living accommodation and the representative or respondent is a tenant of the property and not acting on behalf of the owner of the property

I asked HF is she was still of the opinion that the Act does not apply to this dispute. I noted that the “Residence Agreement” signed by the parties entered into evidence contains the following clause:

> **1.3 Type of Agreement**
>
> You agree that this Agreement creates a licensee/licensor relationship and is not a sublease agreement. [The landlord] is the tenant of the residence and maintains occupancy and exclusive control of the unit. You are an occupant in the unit without exclusive occupancy. As is stated in the *Residential Tenancy Act*

> of British Columbia in the definition of “landlord” and additionally in Residential Policy Guideline 19 section “Occupants/roommates”, shared housing(sharing a kitchen or a bathroom) is excluded from the *Residential Tenancies Act* and special rules or rights that are not the same as the ones under the *Residential Tenancies Act* should be applied. In that case, *Residential Tenancy Act* of British Columbia does not apply to this Agreement or to the occupation of your accommodation.
>
> **The University dormitory housing agreement is used as a template for this Agreement**. This Agreement contemplates the best interests of all residents, not just the best interest of the individual resident, as this is shared housing and different from a private unit.
>
> [as written, emphasis original]

The rental unit is a single room in a larger house. Other rooms are rented to other tenants. There are shared amenities.

HF testified that the landlord does not maintain any office or workspace in the house. She testified that she does not live in the house, nor does any employee of the landlord. She stated that, upon further review of the Act, she is of the opinion that, notwithstanding clause 1.3 of the “Residence Agreement”, the Act applied to the relationship with between the parties and believes the RTB has jurisdiction to adjudicate this matter.

I agree.

RTB Policy Guideline 27 states:

> The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA.

Section 1 of the Act defines “landlord” to include:

> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

The landlord does not own the residential property. The landlord does not occupy the rental unit, nor any of the common areas (such as the kitchen or bathrooms) to which the tenant is also entitled to access. The landlord is not a tenant of the residential property. As such, it falls within the definition of “landlord” under the Act, and I have jurisdiction to hear the application.

Clause 1.3 of the "Residence Agreement" is invalid and of no force or effect. A bare assertion that the landlord is a tenant of the residential property is insufficient to escape the jurisdiction of the Act. Section 5 of the Act prohibits parties from avoiding or contracting out of the Act and causes any such attempts to be of no effect.

I am satisfied that I have jurisdiction to hear the landlord's application.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $2,009.29;
2) recover the filing fee;
3) retain the security deposit in partial satisfaction of the monetary orders made?
4)

Background and Evidence

While I have considered the documentary evidence and the testimony of HF, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term, tenancy agreement starting January 1, 2020 and ending June 30, 2020. Monthly rent was $900 and was payable on the first of each month. The tenant paid the landlord a security deposit of $450 and a refundable "cleaning fee" of $100. The landlord still retains these amounts.

HF testified that, on February 3, 2020, the tenant sent her a text message telling her that she damaged the wall in her room. She wrote:

> I damaged wall accidentally ... I need your help to mend it... I was advised not to use nails right? So I use soft stickers on purpose. I ordered soft stickers from Amazon on purpose not to damage wall.
>
> [as written]

The landlord submitted a photo of the damaged wall which shows four small sections where paint has been ripped off. In the middle of three of these sections there appears to be small indentations.

The landlord sent the photograph to a contractor who replied "wall painting quote is $300: including wall repairs, sand, 2 times wall paint." HF testified that the contractor attended the rental unit and undertook this work after the tenant moved out. The landlord claims the cost of the repairs.

HF testified that the tenant had a dispute with other occupants of the residential property and that these disputes could not be resolved. She testified that she offered to allow the tenant to vacate the rental unit prior to the end of the tenancy, if she wanted.

On April 5, 2020, HF emailed the tenant:

> We are sorry to hear that there was an unpleasant argument happened in the house yesterday. This argument was definitely against the intent of the residence regulations. We will not hesitate to investigate any issue regarding breaking the lease or house rules. Due to the severity of coronavirus, we prefer not to invest more resource for dispute resolution or case investigation. Additionally, to reduce the risk of infection or spreading of Coronavirus disease (COVID-19), it is wise not to visit the house frequently. As the trade-offs, we would like to propose two options to avoid conflicts between you and your housemates. Please carefully weighed positive and negative consequences, hope to get your feedback soon.
>
> **Option 1: Terminate The Lease By April 30, 2020**
>
> - You don't have the obligation to pay for the wall damage you cost, which equivalent to $300. We will pay for that.
> - You don't have the obligation to pay the Termination Fee, which equivalent to two month rent
> - You don't have the obligation to pay rent on the room until [the landlord] finds a new tenant
> - Your deposits will be fully refunded after the resident(s) of move-out procedure, leaving the rental premises in the same condition as we provide.
> - **This offer is effective until April 20th**
>
> **Option 2: Terminate The Lease By May 31, 2020**
>
> - You may pay half of the cost of the wall damage, which equivalent to $150. We will pay for the rest of that.
> - You don't have the obligation to pay the Termination Fee, which equivalent to two-month rent
> - You don't have the obligation to pay rent on the room until [the landlord] finds a new tenant
> - Your deposits will be fully refunded after the resident(s) of move-out procedure, leaving the rental premises in the same condition as we provide.
> - This offer is effective until May 15th

HF testified that, on April 9, 2020, the tenant filed an application to dispute a one month notice to end tenancy for cause and to dispute a two month notice to end tenancy because the tenant does not qualify for subsidized rent. I briefly discussed this

application in the preliminary issue portion of this decision. As stated above, the tenant did not attend the hearing, and the application was dismissed, with leave to reapply.

HF testified that, on April 14, 2020, the tenant indicated that she would vacate the rental unit on May 1, 2020. The tenant sent the landlord an email stating that:

> As of today, I am making plans to fly to Russia and vacate the room on May 1 but Russia will not allow flights until May 1 as of today (official policy of Russia). However, they can make changes after today and it does not depend on me. They may extend the quarantine beyond May 1: if they keep closing the country beyond May 1, I won't be able to leave.
>
> In any case I need to stay until May 1 to hop on a plane if they fly, so I'm asking if I'm allowed to stay till may one (instead of April 30) if I leave after this month.

On April 15, 2020, HF replied:

> Residents do not have the right to move if their lease has not yet expired. If a Resident is bound by a lease and they want to move out before the end of the lease, they should obtain the landlord's written consent to avoid being responsible for paying the remainder of the lease. Considering your situation, we would like to handle the issue by signing a Lease Termination Agreement. In comparison to section 1.10 of the Residential Agreement, we are willing to make some compromises due to your situation.
>
> Regarding the move-out date, the rental period is from the first day of each month to the last day of that month. According the law, you need pay another month's rent if you live in the Leased Premises after the last day of a certain rental period. Unless you want to pay rent for May, then you are obligated to be out at the end of the month or expiration of the lease term. We would like to compromise with you for May's rent if you want. You could pay half month's rent for May and live here until May 15th. Just to remind, renting a hotel is also an option for you. It is up to you.
>
> Rental Agreement can terminate effective as of either April 30th, 2020 or May 15th, 2020. You can sign either of the Termination Agreement. I have sent the Termination Agreement to you via Signnow that you will receive emails with the subject "[the landlord] Needs Your Signature"
>
> - Agreement will terminate effective as of April 30th, 2020, click this signing link to sign the agreement
> - Agreement will terminate effective as of May 15th, 2020, click this signing link to sign the agreement
>
> **Brief of the Termination Agreement**

According to Section 1.10 of the Residence Agreement
Termination of the Residence Agreement On or After Move-In Date by the Resident
1) You may only terminate this Agreement on or after the Move-In Date provided that you:

- pay a Termination Fee equivalent to two months' residence fees.
  You shall only pay a Termination Fee equivalent to one months' residence fees.

- an obligation to pay rent on the apartment until [the landlord] finds a new tenant.
  You don't have the obligation to pay the rest of rent if you agree to pay termination Fee, which equivalent to one months' rent.

- send an email notifying [the landlord] of the termination.
  Done

According to the terms of the Residence Agreement (page 2)

Both the security deposit and the cleaning fee will be fully refunded after the resident(s) of move-out procedure, including but not limited to, leaving the rental premises in the same condition as [the landlord] provides, paying for all damage that resident(s) or resident(s) 's guests cause or any cost arising from failure to vacate (such as the cost of cleaning your accommodation), and returning the key to the representative of [the landlord].

According to "Request for Repairs" Notice

You shall pay the damage cost of the interior wall, which equivalent to $300

Resident Obligation
The resident(s) is legally bound to pay rent for the full lease term, regardless of how many notices the resident(s) give. In other words, you would still be responsible for paying all the rent for May 2020, June 2012 and wall damage you cost if we cannot have a formal agreement to terminate the lease early.

If the residents fail to pay the rent on time or decides to move out without obtaining the landlord's written consent, it will have a legal effect on their tenancy, the long-term impact on the resident(s) credit and rental history. At some point, the residents hopefully understand that the net impact will be on them.

Lease Termination Solution I provided on April 5th, 2020

> Since the Residential Tenancy Branch has received an application for Dispute Resolution and a hearing has been scheduled, the solution is not effective until the hearing is conducted on May 29. We will decide whether to discuss the solution or not based on the Residential Tenancy Branch's decision.
>
> [underlining added, bolding original]

HF followed up on this email on April 17, 2020 as follows:

> I haven't received a response regarding your move-out date, which is the key factor to terminate the lease. This issue may not be moved forward until you confirm your move-out date.
>
> Since you mentioned you planned to leave Canada immediately, I hope to get your feedback soon.

On April 18, 2020, the tenant replied as follows:

> Lease Termination Solutions email - the response is to terminate by May 1 option.
>
> I filed the dispute as I called the Board and They said I ought to reply to your Offer in Writing, so I documented my Response as I was advised to do so.
>
> What else do you need? I am sorry People make plans and You Evicted me 2 times in 2 Emails, i Took the Earliest Option YOu Asked me tot ake to accommodate you and the rest of Tenants and spent a lot of time crying and shouting outside in the end i decided to do as you tell me.
>
> I called the board and they asked to document it in writing - it sis called a dispute response of the tenant that HAS to file it in writing if he cannot resolve it in a conversation with you as i tried.
>
> STOP HARASSING ME> NO RENT will be paid and NO MOVING WILL HAPPEN IF YOU VIOLATE THE AGREEMENT AGAIN.
>
> [as written]

On April 19, 2020, HF replied:

> I am sorry that I don't fully understand what you want, you sent multiple emails and messages with conflicting requests. And I have no idea how to help you decide when you shall flight back to Russia. The only thing I can do is to list the solutions I have, you can choose one based on your situation. It is up to you, you have multiple choices.

Additionally, you can also seek assistance from the Rental Board as the method of handling the rental issue is defined by the law and explained by the Rental Board. I encourage you to keep consulting the Rental Board and know more about your rights and obligations, for sure, I am totally fine if you share all my emails with the Rental Board. You can also file a complaint at the Rental Board if you have different opinions. What we asking for is to follow the law and Residence Agreement you signed, nothing more.

Here are the solutions for early termination:

A: If you want to move out by April 30, 2020

According to the Residence Agreement and “Request for Repairs” Notice, you shall:

1) sign the termination Agreement to obtain the formal document to terminate the lease early(signing link)
2) pay a Termination Fee ($900), the damage cost of the interior wall ($300)
3) get the deposits once you successfully finish the move-out procedure

B: If you want to stay after April 30, 2020 and move out by May 15, 2020

According to the Residence Agreement and “Request for Repairs” Notice, you shall:

1) sign the termination Agreement to obtain the formal document to terminate the lease early(signing link)
2) pay a Termination Fee ($900), the damage cost of the interior wall ($300), half month rent ($450)
3) get the deposits once you successfully finish the move-out procedure

C: If you want to sublet the room as you requested in a text message on April 19, 2020

[omitted]

D: If we cannot have a formal agreement to terminate the lease early

It is necessary to have a written notice by the landlord or a written agreement between both parties to justify early termination.

In terms of the rent payment you mentioned (shown in the attached document “Screenshot_2020-04-192.png”), I **kindly suggest you discuss the whole story with the Rental Board or attorney before doing anything**. If the occupants fail to pay the rent on time or decides to move out without obtaining the landlord’s written consent, it will have a legal effect on their tenancy, the long-term impact on the occupant(s)

> credit and rental history. At some point, the occupants hopefully understand that the net impact will be on them.
>
> The occupant(s) is legally bound to pay rent for the full lease term, regardless of how many notices the occupant(s) give. In other words, you would still be responsible for paying all the rent for May 2020, June 2020 and wall damage you caused if we cannot have a formal agreement to terminate the lease early.

There are some other issues that I would like to mention:

Lease Termination Solution I provided on April 5th, 2020

> An RTB decision or order is considered to be final and legally binding, and all of us have ethical obligations to follow the law. As I mentioned in the email sent on April 15, 2020: Since the Residential Tenancy Branch has received an application for Dispute Resolution and a hearing has been scheduled, the solution is not effective until the hearing is conducted on May 29, 2020. We will decide whether to discuss the solution or not based on the Residential Tenancy Branch's decision.
>
> I am afraid neither of us can apply the options/solutions because applying the solution before RTB making a decision for the Dispute Resolution will bear the risk of breaking the law, which can have a significant impact on the people who practice the solution.
>
> Regarding your offer to withdraw the appeal you texted at midnight on April 18, 2020, I have no intention to ask for that. I prefer to let the RTB judge whether my behavior is legal, whether the email I send is Eviction Notice.
>
> [emphasis original]

The tenant responded by alleging that the landlord attempted to evict her in the April 5, 2020 email, which is why she filed the application to dispute it. She argued that she was required to make the application to make sure her response was in writing.

Then, on April 24, 2020, the tenant emailed the landlord stating:

> I am currently not able to buy a ticket home. As i mentioned before, i would only be able to leave if Russia opens borders, but it says on google flights that there is still a restriction sent by Russian Ministry even after May 1, the Travel Ban.
>
> I will pay you for every day i spend here and i will expect the same Honesty back from you in terms of my 2 deposits back.

I will pay for 2 more weeks until May 15 and will attempt to fix the wall if anyone responds (i have been asking) and is willing to do it in this time of virus.

hopefully, we can resolve it and i have no intention to take anyone's money and i always Pay for myself.

I also hope we can leave on good terms and will do business together in the future as i will be back to town soon and can be your customer again. I would be happy to come back and buy from you after again.

[as written]

On April 27, 2020, HF replied:

I am afraid that your request for prorated rent is not acceptable because it doesn't comply with the residence agreement, which requires you to pay $900 on the 1st day of each month. According to the section "Residence Fees" of the residence agreement we signed, the resident will pay the residence fee of $900 each month on the first day of the rental period which falls on the 1st day of each month.

The legislation requires that tenants pay rent in full and on time. I cannot stop you if you insist to do that, however, you shall consider the very likely consequences, including but not limited to, being evicted, lower credit score, and a bad record. You may consult the Rental Board to confirm that, then you will know this is true. The obligation of paying rent in full and on time is unrelated to the date that Russia reopen the border. You may legally move out any time you want until you get through the standard process and have a formal termination document in writing.

Additionally, I am confused that I repeatedly remind you of the obligation to follow the law and the lease you signed. Both the request for leaving the house without a formal agreement in writing and the request for prorated rent comply with neither the law nor the lease. Undoubtedly, you shall bear the responsibility for breaking the law and the lease, including compensating me for the loss that results.

Please book the flight first then discuss it with us. It is a waste of time if you cannot confirm the date. We try to help you minimize the losses you may cause, unfortunately, we can do nothing without getting any confirmation as you changed your mind many times, from the date you plan to move out to the way you handle early termination.

Please review the Tendency Act and your residence agreement thoughtfully. I encourage you to keep consulting the Rental Board and know more about your

> rights and obligations, for sure, I am totally fine if you share the email regarding the Lease termination with the Rental Board.

On April 29, 2020, the tenant emailed the landlord:

> I made arrangements to stay temporarily in some other place in order to keep our agreement and not let you down. I will move out by May 1 and will leave the key in the door.

On April 30, 2020, the landlord replied:

> You are breaking the lease once you move out before the lease is up.
>
> Abandonment of the rental unit is defined as breaking the lease. Where you do not follow the rules set out by the Residential Tenancy Act to lawfully end your tenancy and instead don't pay rent and simply vacate the rental unit on your own terms, the rental unit is considered to be abandoned.
>
> Since early lease termination hasn't been settled by any written agreement, you may expect us to report it and pursue you for unpaid rent, lost future rental income, advertising costs, damages, etc.

The tenant replied, in two emails, later that day:

> I did not request any prorated rent, I am a reasonable and honest person and i only responded to your Lease Termination notice choosing 1 option, And within the deadline you gave me very clearly.
>
> I never asked for any rent money back as i underatand the law. I talk about security deposits.
>
> I never asked you for prorated rent.
>
> I wrote about security deposits before.
>
> […]
>
> [HF] your Lease Termination emails Are at the court now, everyone saw this, I never Broke the lease. I will tell you again that i responded to the dispute o line as the assisrant on phone saod i Pight to reply to you.
>
> Later, i wrote you an email with the Option. Nothing is cancellwd as the Document you sent does not just Disappear and you have to adhere to the Law. [as written]

HF testified that the tenant vacated the rental unit on May 1, 2020 and did not pay any rent for May 1, 2020.

HF testified that she posted the rental unit for re-rent on Facebook marketplace on April 22, 2020 (as, at that time, she understood that the tenant had already purchased a ticket to Russia and would be leaving the rental unit with or without a mutual agreement in place). She testified that she secured a new tenant on June 20, 2020 at a monthly rent of $900. The new tenant paid $275 in rent for June 20 to June 31, 2020.

The landlord provided three invoices from Facebook marketplace for the posting, as follows:

Description	Amount
May 6, 2020 Invoice (partial)	$32.25
May 11, 2020 Invoice	$70.00
May 23, 2020 Invoice	$82.04
Total	**$184.29**

HF testified that the landlord was not claiming for any advertising costs incurred prior to May 1, 2020.

HF testified that the landlord seeks to recover an amount equal to the rent loss from May 1, 2020 to June 20, 2020, which it calculates as $1,525 ($900 for January and $625 for June).

Analysis

1. Was there a mutual agreement to end the tenancy?

In order to determine this matter, it is necessary to characterize the steps taken by each party in more formal terms. The communication between the parties reveals that they are not in agreement as to the significance of each email, as the emails relate to the creation of an agreement to terminate the tenancy before the end of its term.

Before I do this, it is helpful to provide some basics as to the law of contracts (an agreement to terminate a tenancy agreement before the end of a fixed term is a contract).

The essential elements of the contract creation are:

1) an offer made by one party
2) acceptance of that offer by the other
3) meeting of the minds (consensus as to the terms of the contract)
4) an exchange of “consideration” (each party receives something in the bargain)

An offer may be with withdraw by a party at any point, prior to it being accepted by the other party. A counteroffer by a party has the effect of cancelling the preceding offer of the other party, unless the preceding offer is made again by the other party.

Contrary to the assertion of the tenant in her emails, the April 5, 2020 email did not amount to a notice to end tenancy under the Act. A notice to end a tenancy from a landlord must be issued on official forms available from the RTB. Additionally, the text of the April 5, 2020 email itself does not support the position that it is purported to terminate the tenancy. Rather, if merely offered the option to terminate the tenancy as a way to "avoid conflicts" between the tenant and her housemates. As such, I find that this email is an offer by to terminate the tenancy before the end of the fixed term, on one of two sets of conditions ("option 1" or "option 2").

On April 9, 2020, the tenant made an application to dispute two notices to end tenancy. As stated above, no such notices existed. However, at law, the act of doing this has no effect on the status of the landlord's April 5, 2020 offer.

On April 14, 2020, the tenant wrote "I am asking if I am allowed to stay till May 1 (instead of April 30) if I leave after this month". I note that, at this point, there is no obligation on the tenant to leave the rental unit. She has not been issued a notice to end tenancy, the possibility of her leaving early has merely been raised by the landlord.

In the April 14, 2020 email, the tenant acknowledges that she is not accepting either of the offers in the April 5, 2020 email, as she needs to stay until May 1, 2020. This amounts to a counteroffer (which I understand to be on the same terms as "option 1" in the April 5, 2020 email, but with the end date of the tenancy being altered from April 30 to May 1, 2020). The effect of this email is to cancel the landlord's offer made April 5, 2020.

The landlord's response on April 15, 2020 amounts to a rejection of the tenant's counteroffer. The landlord reiterates that the rental agreement can be terminated on either April 30 of May 15, 2020. (I note that there is no reason in the Act why the tenancy agreement could not be terminated on May 1, 2020, if the parties both agree; however, in this case, the landlord did not agree to such an arrangement, which is its right).

In the April 15, 2020 email, the landlord put forth a new offer to terminate the tenancy agreement early (on different, less generous terms than the now-revoked April 5, 2020 offer). Additionally, the landlord withdrew the April 5, 2020 offer (this was not strictly necessary, as the tenant's counteroffer cancelled it, but leaves no doubt as to the landlord's intentions regarding that offer).

On April 18, 2020, the tenant attempted to accept an offer of the landlord that did not exist, stating: "the response is to terminate by May 1 option." This option was proposed

by the tenant, not the landlord, and as such, was not open to be accepted by the tenant. There is no legal consequence of this statement.

The landlord's April 19, 2020 email reiterated the landlord's April 15, 2020 offer.

The tenant's April 24, 2020 email amounted to a further counteroffer that:

1) the tenant will
    a. pay the landlord for each day she stays in the rental unit;
    b. pay for 2 more weeks until May 15;
    c. attempt to fix the wall.

I note that the first and second term seem contradictory, and the third term is vague and possibly unenforceable as a result, but this is of little importance, as this counteroffer was not accepted by the landlord.

In the April 25, 2020 email, the landlord rejected the tenant's counteroffer. It does not contain a new offer.

As such, on April 25, 2020, there is no offer available to the tenant to accept. In any event, the tenant did not fulfill the requirement set out in the April 15, 2020 offer (the last available offer to accept) that she sign the attached termination agreement.

Section 45 of the Act sets out, absent a mutual agreement to end a tenancy, how a tenant may terminate 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.

As such, when the tenant vacated the rental unit on May 1, 2020, she was in breach of the fixed-term tenancy agreement, whose term ended on June 30, 2020.

2. <u>Damages Caused by Breach of Tenancy Agreement</u>

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is

> up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> (the "**Four-Part Test**")

As stated above, the tenant breached the fixed term tenancy agreement by vacating the rental unit prior to the end of the term.

As a result of this breach, the landlord lost the ability to generate income from the rental unit from May 1, 2020 to June 20, 2020 (when the landlord re-rented the rental unit). I accept that this loss amounted to $1,525.

I find that the landlord acted reasonably to minimize its damages by posting the rental unit on Facebook marketplace in April 2020. I find that it incurred costs in excess of $184.29 in so doing but, as the landlord has only applied for advertising costs from May 1, 2020 onwards, I can only compensate them for that amount.

I order the tenant to compensate the landlord for these losses.

3. Damage to Walls

The tenant admitted to damaging the walls of the rental unit in the text messages submitted into evidence by landlord. In these messages, the tenant wrote "I was advised not to use nails… so I used soft stickers on purpose".

HF did not dispute that the tenant used stickers on the wall, or that the landlord has a policy that tenants are not to use nails in the walls. HF only referred to a clause of the tenancy agreement which stated:

> You agree to pay for damages, lost property or extraordinary service or administrative costs you or your guests cause to [the landlord] shared housing facilities whether through accident, neglect or intent.
>
> All residents of a unit may be assessed for cleaning, damages, lost property or extraordinary service costs where the person(s) responsible cannot be ascertained by [the landlord] but where the damages, lost property, or excessive

> mess were reasonably believed by [the landlord] to be caused by one or more residents of a unit.

This language similar to subsections 32(2) to (4) of the Act, which states:

> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
> (4) A tenant is not required to make repairs for reasonable wear and tear.

However, Policy Guideline 1 states:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.

I understand the inverse of point one to be true as well: where the landlord indicates that nails cannot be used, the tenant will not be liable for damage caused by using reasonable alternatives.

Based on the evidence before me, I do not find that there was an excessive number of holes in the wall. I also accept that the tenant accurately stated the landlord’s instructions to her that she should not use nails in the walls. I find that her use of soft stickers to hang an object from the wall to be reasonable alternative. As such, based on the principles set out in Policy Guideline 1, I do not find that the tenant is responsible for paying for the repairs to fix the damage to the wall, as this damage represents reasonable wear and tear.

Accordingly, the landlord is not entitled to recover any portion of the cost of the wall repairs from the tenant.

Pursuant to section 72(1) of the Act, as the landlord has been mostly successful in the application, it may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit ($450) in partial satisfaction of the monetary orders made above. I note that the Act does not permit a landlord to obtain a separate refundable "cleaning fee" from a tenant. The Act defines security deposit as:

> money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property

A refundable "cleaning fee" meets this definition.

In any event, the Act does not contain penalty for the collection of such a fee. As such, the landlord may keep the "cleaning fee" in partial satisfaction of the monetary orders made above. I caution the landlord against collecting such fees in the future.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord $1,259.29, representing the following:

Description	Amount
Loss of Rent	$1,525.00
Advertising Costs	$184.29
Filing Fee	$100.00
Security Deposit Credit	-$450.00
Cleaning Fee Credit	-$100.00
Total	**$1,259.29**

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 22, 2021

Residential Tenancy Branch