



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-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 unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38;
- 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. The tenant was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and made reference to materials which they say was served on the landlord. The landlord confirmed receipt of materials from the tenant though they dispute that it contained a separate application. The tenant alternately referred to serving on the landlord a counterclaim, an amendment to a claim, and written submissions. I have reviewed the submission history of the parties and it is evident that the tenant has not filed a separate claim against the landlord. I find that the materials referenced by the tenant and confirmed to be received by the landlord is simply their evidentiary materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant made an application for an adjournment. The tenant submits that they have a number of health issues for which they are receiving treatment that limits their cognitive function. The landlord did not consent to an adjournment.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find insufficient evidence that an adjournment is appropriate at this time. I find the submissions of the tenant to be vague, lacking in cogent details and not supported by any documentary materials. Despite questions being put to them the tenant failed to provide details of their health issues, when these issues arose, the nature of treatment they are receiving and if there is any likelihood of being better prepared for a hearing with additional time.

I find that the vague testimony of the tenant and their family member to be insufficient to establish that there is any real prejudice to the tenant to proceed with the hearing and that an adjournment is required to provide a fair opportunity for the tenant to be heard.

Under the circumstances, I find that the tenant has not met the criteria established for granting an adjournment and proceeded with the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy originally began on October 1, 2004. The parties most recently renewed the tenancy for a fixed-term commencing January 1, 2019 and ending December 31, 2021. Monthly rent at the end of the tenancy was \$4,513.00 payable on the first of each month. A security deposit of \$862.50 was paid at the start of the tenancy and is still held by the landlord.

The tenant gave written notice to end the tenancy by a letter dated January 21, 2021 providing an effective date of January 31, 2021. The tenant failed to pay rent for the month of February 2021 putting a stop payment on the postdated cheque held by the landlord.

The landlord seeks a monetary award in the amount of \$4,513.00 for the unpaid rent for February 2021 and a \$50.00 award for the NSF fees for the cancelled cheque.

The tenant did not participate in a move-out inspection with the landlord despite the landlord providing multiple opportunities and issuing a Notice of Final Opportunity for January 31, 2021. The landlord completed the condition inspection report in the absence of the tenant and found various issues requiring cleaning, garbage disposal, repairs and work.

The landlord submitted into evidence the condition inspection report, photographs of the suite as well as receipts and invoices for the work performed on the rental unit. The landlord submits that the total cost of all work required due to the tenancy is \$3,752.20.

The landlord also seeks recovery of the costs of serving the tenant by registered mail and their filing fees for the present application.

Analysis

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.

Section 45 of the *Act* explains that a tenant may end a fixed-term tenancy by giving the landlord notice on a date not earlier than the date specified in the tenancy agreement and no earlier than one month after the date the landlord receives the notice.

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.”

In the present case I accept the evidence of the parties that the tenant gave written notice to end the tenancy on January 21, 2021. As the effective date provided on the notice is earlier than the date given in the fixed-term tenancy agreement signed by the parties I find that the corrected effective date of the notice was December 31, 2021. I find that the tenant remained obligated to pay monthly rent in the amount of \$4,513.00 on February 1, 2021.

I accept the undisputed evidence of the landlord that they mitigated their losses and are only seeking unpaid rent for the month of February 2021. I accept that the landlord incurred a loss of unpaid rent as well as bank charges due to the tenant putting a stop payment on a cheque for the rent payable on February 1, 2021. Accordingly, I find the landlord is entitled to a monetary award in the amount of \$4,5613.00 for the unpaid rent and fees arising due to the tenant's breach of the tenancy agreement.

Residential Tenancy Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator “may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement”.

In the present case I find that due to the length of this tenancy some of the items claimed by the landlord have exceeded the expected useful life. I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear during a tenancy of this length.

I accept the evidence of the landlord that the tenant vacated the rental unit without returning keys and building FOBs and they incurred a cost for their replacement. I am satisfied with the evidence of the landlord that the rental unit was not suitably cleaned and the tenant left behind many items requiring disposal and cleaning of the suite. I accept that the tenant, in their communication with the landlord, have taken responsibility for some damage to the rental unit bathrooms and I find these costs to be recoverable.

I find that much of the painting and repairs of the walls, ceiling, baseboards and flooring of the rental unit to be for items where the expected useful life has long expired and the work is not attributable to the tenancy. Similarly I find that the replacement of electrical fixtures would have been required due to the age of the rental unit and are not costs that arise due to the actions or breach of the tenant.

Based on the totality of the evidence I find that a monetary award in the amount of \$1,369.45 to appropriate for the damage and losses incurred by the landlord.

I find that the costs of registered mail and preparing evidence are the expected costs of pursuing an application and are not recoverable as against the tenant.

As the landlord was successful in their application they are entitled 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 \$5,169.95, allowing for the recovery of unpaid rent, damages and loss and filing fee and to retain the security deposit for this tenancy.

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: May 13, 2021

Residential Tenancy Branch