



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of both hearings, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

PB gave the following testimony on behalf of the landlord. PB testified that the parties signed two consecutive one year fixed term tenancies on January 6, 2020. The monthly rent of 2450.00 was due on the first of each month and at the outset of the tenancy the tenants paid a security deposit of \$1225.00. PB testified that the tenants did not give notice that they would not be staying for the second year and moved on February 2, 2021. PB testified that they want three months rent as compensation $\$2450.00 \times 3 = \7350.00 . PB testified that the tenants left the unit very dirty requiring professional cleaners. PB testified that the tenants left holes in the wall that required filling sanding and painting. PB testified that they seek \$800.00 for repairs and cleaning along with the \$100.00 filing fee for a total claim of \$8250.00.

AC gave the following testimony on behalf of the tenants. AC testified that he had emailed the landlords in December 2020 seeking to come to a mutual agreement to end the tenancy as the tenants had purchased a home and didn't require the second year of the tenancy. AC testified that he found it peculiar that he didn't see any advertisements for the suite online until the day that he moved out. AC testified that the landlords haven't provided proof of their attempts to rent the unit. AC testified that the move in and move out condition inspection report doesn't reflect the landlords' claims for this hearing. AC testified that he had offered to fill the holes left behind for the television mount but wasn't given an opportunity to do so, even though they had vacated 8 days earlier than the end of the tenancy. AC testified that the landlord has not provided proof of his costs and that the whole application should be dismissed.

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 provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Repairs - \$800.00

The landlord did not provide any invoices or receipts to reflect his actual out of pocket costs. In addition, the landlord did not provide a specific breakdown of the costs and the scope of work that he alleges was done. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Lease Break Compensation - \$7350.00

I find that the landlord and tenants entered into a fixed term tenancy for the period from February 1, 2021 to February 1, 2022. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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 above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants advised the landlord on December 23, 2020 that they had purchased a home and would not require the second lease that they had signed in advance and would move out prior to that second agreement taking effect. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord

may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for three months rent as compensation, without leave to reapply. I find that the landlord failed to provide sufficient documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for and how quickly did they attempt to post and rent the unit. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. The landlord wasn't even sure which months he had a rental loss for, if any.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit. The landlord did not even know when the rental unit was re-rented to new tenants. Based on the above, I dismiss the landlord's application in its entirety without leave to reapply. The landlord is to return the \$1225.00 security deposit back to the tenants.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord is to return the \$1225.00 security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$1225.00. This order may be filed in the Small Claims 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: June 04, 2021

Residential Tenancy Branch