



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-C, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”) for a monetary order for compensation for monetary loss or other money owed, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for compensation for monetary loss or other money owed?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on October 1, 2020, as a four-month fixed term tenancy that rolled into a month-to-month tenancy as of February 1, 2021. Rent in the amount of \$2,900.00 was payable on the 30th day of each month, and the Tenant had paid a security deposit of \$1,450.00 at the outset of this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

Both parties agreed that the Tenant issued notice to the Landlord by sending a Whatsapp message to the Landlord on December 3, 2020, that they would be ending their tenancy and moving out of the rental as of January 31, 2021. The Landlord submitted a copy of the Whatsapp message into documentary evidence. The Landlord testified that they received the Tenant's Whatsapp message on January 3, 2021.

The Landlord and the Tenant agreed that the move-out inspection had been completed in accordance with the *Act* on January 31, 2021. The Landlord submitted a copy of the Inspection report into documentary evidence.

Both parties agreed that the Tenant did not serve the Landlord with written notice in accordance with the *Act*, but that Landlord agreed that as of January 3, 2021, they were fully aware that the tenancy was ending and that they had listed the rental unit as available for rent online. The Landlord submitted a copy of their online advertisement into documentary evidence.

The Landlord testified that they secured a new renter for the rental unit as of February 13, 2021, and that they collected \$2,300.00 in rent from the new renter for February 2021. The Landlord is requesting the recovery of their lost rental income for February 2021.

The Landlord testified that during the move-out inspection, damage was discovered in the rental unit, including a cracked floor tile and a broken glass fridge shelf. The Landlord testified that the floor tile would cost \$504.14 to have repaired but that this repair had not been completed as of the date of these proceedings due to Covid-19

restrictions. The Landlord testified that the floor tile had been installed in 2017. The Landlord submitted a quote to have the floor repaired into documentary evidence.

The Tenant testified that the floor was damaged at the beginning of this tenancy but agreed that they had not had this damage recorded on the move-in inspection report.

The Landlord testified that the glass shelf cost \$226.17 to be replaced and that they have submitted a quote to have the shelf replaced into documentary evidence. The Landlord confirmed that the glass shelf had been replaced in February 2021. When asked, the Landlord was not able to provide the final invoice for this repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As per the tenancy agreement, I find that this tenancy had rolled into a month-to-month tenancy (periodic tenancy) as of January 31, 2021. I accept the agreed-upon testimony of these parties that the Tenant moved out of the rental unit as of January 31, 2021, without providing the required one-month written notice to the Landlord. Section 45 of the *Act* sets how a tenancy may legally end, stating the following:

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.

(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.

I also accept the Landlord's testimony, supported by their documentary evidence, that as of January 3, 2021 the Landlord understood that the Tenant would be ending their tenancy on January 31, 2021.

Pursuant to section 45 of the *Act*, I find that that this tenancy legally ended, in accordance with the *Act*, on February 28, 2021, one full rental month after the Landlord had been legally notified that the Tenant had decided to end their tenancy.

The Landlord is claiming to retain the security deposit for this tenancy as compensation for their loss of rental income for February 2021. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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."

In this case, I find that the Tenant breach section 45 of the *Act* when they did not provide the required one-month written notice to end their tenancy.

I accept the Landlord's testimony that they were able to secure a new renter for this rental unit as of February 13, 2021, and that they collected \$2,300.00 in rent from that new renter for the month of February 2021.

In this case, I find that the Tenant's breach of section 45 of the Act resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for February 2021, in the amount of \$600.00; the difference between the rent due under the Tenant's tenancy and the rent collected from the new renter for February 2021. I award the Landlord \$600.00 for their lost rental income for February 2021; I grant permission to the Landlord to retain \$600.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

The Landlord has also claimed \$504.14 for the quoted repair costs for a damaged tile floor. I accept the Landlord's testimony, support by the move-out inspection report and their picture evidence that a floor tile had been damaged during this tenancy and left unrepaired at the end of this tenancy. Section 37(2) of the Act requires that a tenant return the rental unit undamaged at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached section 37 of the Act when they returned the rental unit to the Landlord damaged. I also find that the Landlord has provided sufficient documentary evidence to show that they will suffer a loss of \$504.14.00 due to the cost to repair the damaged tile, I also find it reasonable that due to Covid-19 restrictions, the Landlord had been delayed in effecting this repair and I accept the Landlord's quoted costs for this repair.

However, in determining the appropriate amount to award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The

guideline sets the useful life of floor tile at ten years; as the floor tile for this rental unit was installed in 2017, I find that this tile was four years old at the end of this tenancy and that costs for repairs for this floor must be reduced by 40% due to the age of the tile. Therefore, I award the Landlord the return of 60% of their quoted repair costs in the amount of \$302.48 and grant permission to the Landlord to retain \$302.48 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Additionally, the Landlord has claimed \$226.17 for the quoted repair costs for a damaged glass shelf in the fridge of the rental unit. I accept the Landlord's testimony, support by their move-out inspection report, that the glass shelf had been broken during this tenancy and left unrepaired at the end of this tenancy.

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged. However, the Landlord has provided a quote as proof of their costs to replace the damaged shelf and not the final invoice for this item. As this shelf had already been replaced at the time of these proceedings, I find that the Landlord was required to submit the final invoice, not a quote, to prove their true costs for this damaged item. Therefore, I find that the Landlord has not provided sufficient documentary evidence to show their true costs to repair the fridge, and I dismiss the Landlord's claim for the recovery of their costs for this item.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to retain \$1,002.48 of the security deposit they are holding for this tenancy, consisting of \$600.00 in lost rental income, \$302.48 in damages, and \$100.00 in the recovery of the filing fee for this hearing.

The Landlord is ordered to return the remaining \$447.52 of the security deposits to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the security deposit and pet damage deposit, the Tenant may file for a hearing with this office to recover the remaining security deposit for this tenancy.

The Tenant is also granted leave to apply for the doubling provision pursuant to section 38(6b) of the *Act* if an application to recover their security deposit is required.

Conclusion

I grant the Landlord permission to retain \$1,002.48 of the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded in this decision.

I order the Landlord to return the remaining \$447.52 of security deposit for this tenancy to the Tenant within 15 days of the date of this decision.

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: July 6, 2021

Residential Tenancy Branch