



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the “Application”) on March 9, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. Additionally, the landlord seeks to recover the filing fee for the application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 20, 2021. At the outset, both parties confirmed they received the prepared document evidence of the other in advance of the hearing. Both parties had the opportunity to present their evidence and oral testimony in the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage other compensation pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

In this section, I set out only the submissions and evidence that is relevant to my analysis and findings below.

The landlord provided a copy of the tenancy agreement between the parties, and neither party disputed the terms therein. Both parties signed the agreement on January 20-21, 2021 for the fixed-term tenancy starting on February 1, 2020. At the time of the end of the tenancy in February 2021, the tenancy existed on a month-to-month status. The monthly rent was \$2,400 month, and the tenant paid a security deposit of \$1,200.

a. March 2021 rent amount: \$2,400

In the hearing, the landlord stated the tenant on February 3, 2021 mentioned to the landlord that they would be leaving. The landlord testified that they stated this was late, and the tenant would be obligated to pay the rent for March 2021 unless new tenants could enter a new tenancy agreement.

Following this, on February 5 the tenant gave a written notice to end tenancy for February 9, 2021. After this, the tenant stayed until the end of February. With new tenants waiting for this rental unit, the landlord had to move them to another vacant unit, where they chose to remain. For the rental unit at issue here, the landlord found new tenants for April 1st.

In the hearing, the tenant provided that, if the landlord had stated the tenant was obligated to pay for March, then they would have stayed in March. The last day of the tenancy here was February 28, with new tenants scheduled to move into the rental unit on the following day. The tenant also described their difficulties scheduling the elevator for their move out on that final day.

The landlord claims the rent amount for March for the reasons that the tenant provided short notice. Because of the state of the rental unit, they were unable to do so. They provided their email to the tenant dated February 3rd where they gave a link to information on ending a tenancy. This was when they provided the required form to the tenant attached to that same email. On February 8th, the landlord advised: “. . . it is still required to give proper notice to the owners as per the lease agreement” and “one calendar month’s advance notice is required in writing.”

Further:

giving 4 days notice is not acceptable and you will be responsible for March Rent as well (unless the unit is rented for March 1st). We can use your Security Deposit towards the outstanding rent amount if there is no damage or cleaning required in the unit.

The landlord reiterated this point to the tenant in their email dated February 9, in answer to the tenant’s request to stay with a reduction in rent. The landlord stated: “We will do our best to mitigate your damages and re-rent the unit for March 1st.”

b. repairs and cleaning

An addendum attached to the tenancy agreement contains a specific promise on suite painting and wallpaper. This agreement sets out: the tenant states they “will NOT at any time during tenancy paint, wallpaper, or alter the suite in any manner or to any other color(s)”; and if they should gain written permission from the landlord, they will “professionally return the suite back to it’s original condition . . .” Additionally, if permission is granted, this is to be at the tenant’s own expense.

Damages		
Item	What	Cost
repairs	wall repairs	1,260.00
repairs	misc	105.00
plumbing	feed tube repair	194.25
cleaning	cleaning/junk removal	425.25
estimate: repair	tile/floor repair	720.00
	Total	2,704.50

The landlord provided receipts for each of the above amounts, each dated in March. The estimate for floor and tile repair notes “4 areas in shower and 1 area on the floor.” These areas are shown in photos. Other photos provided by the landlord show the need for cleaning throughout the unit. Photos show the state of living room walls both before and after the removal of wallpaper in the unit. The walls show the need for repair and paint. In pictures, the landlord identified four areas of tile damage where it is apparent the tenant tried to cover the damage with paint, and there is a paint stain on the kitchen floor.

The tenant provided a copy of a text message to the landlord where they show no holes in the walls; however, the paint they used did not match to the original. The tenant testified that they did not have the landlord’s permission initially for wallpaper yet at the end of the tenancy they identified this to the landlord and the landlord stated to them ‘as long as there are no holes it’s okay.’ Also, anything used on the walls was “contact paper”. For other cleaning costs, the tenant felt these were “exaggerated.” The bathroom tile would be relatively easy to clean on the landlord’s own effort, with no need for a specialist.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and

order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

- a. March 2021 rent amount: \$2,400

I find it if were not for the short notice provided by the tenant, the landlord would not have lost income for March 2020. Though new tenants were in place, they were not able to move into the rental unit as planned. They arranged for a different rental unit – I find this represents a loss to the landlord.

The *Act* s. 45 sets out the responsibility of a tenant when ending a tenancy. For a periodic tenancy such as existed here, the effective date is that “not earlier than one month after the date the landlord receives the notice” and “the day before the day in the month . . . that rent is payable under the tenancy agreement.”

The tenant made the submission that it would seem logical that they would stay through March if they were obligated to pay rent for that month. I find there is no proof the tenant identified clearly to the landlord they intended to remain for the entirety of March.

I find the tenant providing late notice to the landlord constitutes a breach. The landlord made the effort at mitigating the impact; however, due to the state of the rental unit, having new tenants in place was not possible. Despite the landlord's efforts, they suffered a loss for the March 2020 rental and for this I order they shall be compensated. This is the full amount of March 2020 rent as claimed, for \$2,400.

b. repairs and cleaning

The *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant was aware of the provisions on wallpaper and other alterations to the walls. This was set out clearly in the addendum to the tenancy agreement as provided by the landlord. The tenant did not return the suite back to its original condition; on this I give weight to the landlord's evidence. The tenant did not provide sufficient proof that the walls held other wallpaper or material such as contact paper. This is beyond wear and tear that is allowed by the *Act* and this is a breach of s. 37. Further, the use of wallpaper and not returning the unit to its prior state is a violation of a particular term of the tenancy agreement. For this, the landlord shall receive the full amount of their claim for work undertaken to recover this monetary loss; this is \$1,260.

The landlord presented an invoice for \$105 and applies for this amount as extra repairs. On my review, none of the items listed on this invoice are shown in the evidence. These are lights and regluing of a floor transition. With no evidence, I am not satisfied that a damage or loss exists; therefore, there is no compensation for this portion of the landlord's claim.

The landlord showed areas of bathroom tile needing attention, and a tiny area of green paint splashed on the kitchen floor. The landlord's evidence to establish the value of work needed is a simple email with insufficient detail. The type of work needed is not set out – whether this is tile replacement, or sanding or other type of work is not set out. This is insufficient evidence to establish the value of the damage or loss and I am not satisfied there was an effort at mitigation. For this reason, I dismiss this portion of the landlord's claim.

I find the landlord established that damage to the toilet existed in the form of a feed tube needing replacement. This is a \$20 part and I find the work involved is minimal and easily accomplished. I find the \$150 labour cost for this is inflated and does not represent an effort at minimizing the loss. I award only \$20 for the part needed and a nominal amount of \$20 for the effort needed to replace it.

The need for cleaning is shown in the landlord's photos. I give this evidence more weight than the testimony of the tenant wherein they described not having ample time to clean out the unit because of elevator scheduling. The landlord provided ample instructions to the tenant on the move-out procedure and requirements. The receipt provided by the landlord shows move-out cleaning and window blinds repair; however, there is no evidence to show what the blinds

repair consists of or the need for it. I am not this damage or loss exists; therefore, I reduce the landlord's claimed amount here to \$285 as shown on that receipt for cleaning and add 5% tax. This award to the landlord is \$299.25.

As the landlord was moderately successful in this Application for compensation, I find they are entitled to recover \$50 of the Application filing fee.

The landlord has made their claim against the security deposit and the pet deposit. With the landlord holding this amount of \$1,200, I order this amount deducted from the recovery of the utility and cleaning amounts totalling \$2,799.25. This is an application of s. 72(2)(b) of the *Act*.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,849.25 for damage and other monetary loss, and a recovery of a portion of the filing fee for this hearing application. I provide the landlord this Order and they must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order may in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: September 8, 2021

Residential Tenancy Branch