



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stroshin Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

KC ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The landlord testified that they were not served with the tenants' evidentiary materials. The landlord testified that they were ok with the admittance of the tenants' letter, which was read out loud in the hearing by myself. Accordingly, the letter was considered for the purposes of this hearing. In the absence of sufficient evidence to support that the landlord was served with the remaining materials, the remainder of the tenants' evidence was excluded for the purposes of this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 24, 2020, and continued on a month-to-month basis after March 31, 2021. Monthly rent was set at \$1,600.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$800.00, which the landlord still holds. The tenancy ended on May 1, 2021 after the tenants gave notice to the landlord on April 16, 2021 that they planned on moving out by May 15, 2021. The tenants submit that they had informed the landlord prior to April 2021 that they had plans to move out.

The landlord is seeking the following monetary claims related to this tenancy:

Item	Amount
Paint & Paint Materials	\$243.01
Paint	204.12
Labour – Painting	800.00
Labour – Cleaning	150.00
Loss of rental income -May 2021	1,600.00
Late Fees	25.00
Total Monetary Order Requested	\$3,022.13

The landlord submits that the tenants were informed that as notice was given on April 16, 2021, the tenants would still owe rent for the month of May 2021. The landlord submits that the tenants decided to move out on May 1, 2021, without paying any rent for that month. The landlord confirmed that the unit was re-rented for June 1, 2021 after screening prospective tenants, and June 1, 2021 was the earliest date a suitable tenant could move in. The landlord testified that they did consider the prospective tenants referred by the tenants, but that they were either not interested or able to move into the rental unit in May 2021, or they did not answer emails or phone calls, or fulfill the credit check requirements.

In addition to the loss of rent for May 2021, the landlord is seeking the late fee of \$25.00, which is set out in the rental agreement.

The landlord is also seeking reimbursement for the cost of painting and cleaning the rental unit. The landlord submits that the rental unit was recently painted in January 2020, and that a strong odour persisted in the rental unit, which the landlord attributes to the smell of cigarettes. The landlord testified that the unit required cleaning and painting due to the strong odour.

The tenants dispute that they smoked inside the rental unit, and testified that the odour was present when the tenants first moved in. The tenants also dispute the landlord's claim for cleaning as they feel that they returned the rental unit to the landlord in satisfactory condition.

The tenants do not dispute that they had moved out on May 1, 2021 and did not pay rent for the month of May 2021, but testified that they attempted to mitigate the losses by providing applications for five prospective tenants, who were all rejected by the landlord. The tenants testified that they were informed that if a suitable tenant was found, the landlord only require a partial payment of the May 2021 rent.

Analysis

Section 45 of the *Residential Tenancy Act* reads in part as follows:

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.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. As noted above, the effective date must not be earlier than one month after the date the landlord receives the notice, and must be the day before the day in the month that rent is payable under the tenancy agreement. In this case, the tenants gave proper written notice on April 16, 2021. The earliest effective date would have been May 31, 2021. I am not satisfied that there is a mutual agreement for the tenancy

to end on any earlier date, nor am I satisfied that the tenants were in possession of any order from an Arbitrator allowing them to move out earlier than May 31, 2021. I find that the tenants moved out on May 1, 2021, without paying any rent for May 2021.

In consideration of the landlord's duty to mitigate their losses, as is required by section 7(2) of the *Act*, although I accept the testimony of the tenants that they did make an effort to assist the landlord with filling the vacancy as soon as possible, and therefore mitigating the losses suffered by the landlord, I find that the landlord provided a reasonable explanation for why the earliest date the unit could be re-rented was June 1, 2021. Although the landlord does have a duty to mitigate their losses by attempting to re-rent the rental unit as soon as possible, this obligation must be balanced with the landlord's obligation to fill the vacancy with a suitable and interested tenant. I find that the landlord has an obligation to do their due diligence by performing credit checks, and well as other screening which is normally performed when finding a suitable tenant. In this case, I am satisfied that the landlord was able to fill the vacancy within a reasonable amount of time. I find that the landlord had fulfilled their obligations to mitigate their losses following the tenants' failure to give proper notice in accordance with section 45 of the *Act*. I find that the tenants moved out on May 1, 2021, without paying any rent for the month of May 2021. I therefore find that the landlord is entitled to a monetary order for May 2021 rent, plus the applicable \$25.00 late fee as stipulated in the tenancy agreement.

The landlord is also seeking a monetary order for losses related to cleaning and painting, which the landlord felt was necessary due to the strong and lingering odour of cigarette smoke. The tenants dispute smoking in the rental unit, and that they were responsible for the smell in the rental unit. 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 or 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. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlord.

In light of the disputed testimony and evidence before me, I am not satisfied that the landlord had sufficiently supported the claims made in relation to the painting and cleaning

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

6.6 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.

I find that the landlord failed to meet the standard of proof required to support the tenants had caused the considerable smell of smoke, and to the extent that they should be responsible for the cost of painting and cleaning. Accordingly, the remainder of the landlord's claims for monetary losses are dismissed without leave to reapply.

As the landlord's application had merit, I allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a \$925.00 Monetary Order in favour of the landlord as set out in the table below.

Item	Amount
Loss of rental income -May 2021	1,600.00
Late Fees	25.00
Filing Fee	`100.00
Less Security Deposit Held	-800.00
Total Monetary Order	\$925.00

The tenants must be served with this Order as soon as possible. Should the tenants 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.

The remainder of the application is dismissed without leave to reapply.
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: December 14, 2021