Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes
(Landlord) [PA] Real Estate Services	310037980	MNRL-S, FFL
(Tenant) [P.Z.]	910038076	MNSDB-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

On May 14, 2021, the Landlord applied for:

- $2,200.00 compensation for unpaid rent – holding the pet and security deposits for this claim; and
- recovery of their $100.00 application filing fee.

On May 17, 2021, the Tenant applied for:

- the return of double the security and pet damage deposits in the amount of $2,200.00; and
- recovery of her $100.00 application filing fee;

The Tenant and an agent for the Landlord, K.H. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Both Parties said they had received the Application and Notice of Hearing documents from the other Party; however, the Agent denied ever having received the Tenant's emails with her evidence prior to the hearing. The Landlord did not submit any evidence to the RTB or the Tenant. The Tenant said that she sent her evidence to "…six different email addresses for the [Landlord's] company". I find that the Tenant went beyond what was necessary in attempting to serve the Landlord with her evidentiary submissions. I find it is more likely than not and more credible that the Landlord received at least one of these six emails and had an opportunity to review the Tenant's evidence. I, therefore, find it reasonable on a balance of probabilities to consider that the Tenant's evidence is before me.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 12, 2021 and was to run to May 31, 2021, however, the Tenant moved out on April 30, 2021. The Parties agreed that according to the tenancy agreement, the Tenant was obligated to pay the Landlord a monthly rent of $2,200.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of $1,100.00, and a $1,100.00 pet damage deposit. The Parties agreed that the Tenant gave the Landlord her forwarding address on the condition inspection report ("CIR") from the move-out inspection that the Parties conducted on April 30, 2021.

LANDLORD'S CLAIMS

The Agent explained the Landlord's claim, as follows:

> Tenant is fixed term until end of May and gave notice – 3 weeks notice to leave, so the Tenant didn't complete the tenancy per the contract.

I asked the Agent if the Landlord had re-rented the residential property, and she said that someone moved in on June 1, 2021. She went on: "Short of a time to re-rent it. Market is actually pretty busy at that time. A surge of rental properties at that time."

The Agent named two places in which the Landlord had advertised for a new tenant, and she said she advertised in "…a lot of places." She said they also advertised on the Landlord's website.

The Tenant said:

> As per the evidence, I submitted, I took screen shots of their ads; they did not list my suite for the amount that my rent was - $2,200.00 – they had different suites that were not mine. They didn't have my suite listed at all.
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> I told them that I knew I was breaking my lease. However, they did not do their reasonable duties to mitigate my losses. There were no showings at all. They made no effort to re-rent it for May 1. And it was listed for $2,300.00, not $2,200.00.

The Agent said: "I don't have any evidence about the ... We advertised for the same price." The Tenant said:

> I uploaded advertising sites. I emailed it to you last week and to eight of your emails, so I don't know how it could be missed.
>
> I sent an email to your building's address, the rental's address, . . . accounting, [email address], and I have confirmation saying it was delivered to your email addresses. I sent a file with 29 emails.

I asked the Agent, if she had looked in her spam folder, and she said she couldn't look there now.

I asked the Agent if they had any showings of the rental unit in April 2021, and she said:

> I am not sure. At that time, [E.] was doing the showings. She's no longer working for us. But we did advertise right away and that's for sure. We've done our best to do that for three weeks. We got someone from June 1.

I asked the Agent if they had tried to rent it for May 1, 2021, and she said, "Yes, we did."

The Tenant said:

> No, they didn't. I documented it. And they did not try to re rent it. I submitted

screen shots of where you have listed the suite for August 1 for $2,200.00. There are different sites where my suite is not listed at all. If it was on the site itself, it was listed for $2,300.00. I was thoroughly checking these ads, and it was not clear that my suite was available. There were other studios in the building that were put up on these websites, but not mine. When I told [E.], she had said that there were other suites in the building that take priority.

I would like to say that in dealing with them to do this, they were difficult, and they did not do their duty to mitigate my losses. I called the RTB about this and they said even though I gave three weeks' notice, the Landlord was still responsible for renting it out.
And by increasing the rent and not advertising my suite, and by giving a different date for availability, they did not do their best to re-rent this suite for me.

Also, I provided that at my check out, I had a friend with me as a witness. They said they'd give me the security deposit back in full – I have a recording of them saying that. But they didn't do what they're supposed to, and I've worked in property management for a decade, and I understand my rights and their rights. They needed to do their due diligence. Raising the rent by $100.00, would deter potential renters. They should have tried to re rent for my rent, and done more to rent it for May 1st. There are many screen shots throughout the month of April showing how they neglected that.

I looked at the advertisements the Tenant submitted and studio apartments in the residential property were listed for $2,300.00. In the advertisement dated April 21 - 25, 2021, on a well-known advertising platform, the rent for studio apartments in the residential property is $2,300.00, and the availability date is June 1, 2021. In another advertisement of a studio apartment in the residential property dated April 25, 2021, the availability date of the rental unit was August 1, 2021.

TENANT'S CLAIMS

The Tenant said that her claims are for the return of double the security and pet damage deposits that the Landlord has unreasonably retained, and recovery of the $100.00 Application filing fee.

The Agent said that the Landlord is not claiming compensation for any damage done by the Tenant or her pet(s), but just for loss of rental income. She did not have anything further to say about the Tenant's claim.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45(2) of the Act deals with ending a fixed term tenancy, as follows:

> **45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.
>
> **. . .**
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Parties agreed that the Tenant did not give sufficient notice of the end of her tenancy to the Landlord, pursuant to section 45 of the Act.

Policy Guideline #3, "Claims for Rent and Damages for Loss of Rent" states the following about this situation.

> **C. Tenancies ending early and compensation**
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> A tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the *RTA* (section 38 of the *MHPTA*) set out how a tenant may unilaterally end a tenancy agreement.
>
> Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the *RTA* and the *MHPTA).* This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

. . .

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

For example, a tenant has entered into a tenancy agreement for a fixed term of 12 months with rent of $1000 per month. The tenant leaves the premises in the middle of the second month, after not paying rent for that month and having received a notice to end tenancy for non-payment of rent. The landlord re-rents the premises from the first of the next month but only at $950 per month. The landlord would be able to recover the unpaid rent for the second month and the $50 difference over the remaining 10 months of the original term.

. . .

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the *RTA* and the *MHPTA*). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

Even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued.

. . . .

[emphasis added]

LANDLORD'S CLAIM

I find that the Tenant breached the tenancy agreement and section 45 (2) of the Act by ending the tenancy one month prior to the end of the fixed term set out in the tenancy agreement. I find that the Tenant was obliged by the Act to pay the rent up to the end of

the fixed-term tenancy; however, this obligation is tempered by the Landlord's obligation to do whatever is reasonable to minimize their damages or loss.

I find that the Agent's denial that they advertised the rental unit at a higher rent than that paid by the Tenant, and that they sought a new tenant for May 1st raises questions in my mind about the credibility and reliability of her evidence, in the face of the Tenant's evidence. As a result, I find that the Tenant's evidence is more credible and reliable than is the Landlord's evidence.

I find that the Landlord failed to mitigate their losses properly, as evidenced in the Tenant's submissions of the Landlord's advertising efforts. The examples the Tenant submitted may not have been everything that the Landlord did to re-rent the rental unit; however, the Landlord did not submit any evidence of other advertisements. There is no documentary evidence before me that the Landlord tried to advertise the rental unit for May 1, 2021, at the same rate as the Tenant was required to pay. Nor did the Agent offer a reasonable explanation for why this might not be the case.

Policy Guideline #16 states:

> **C. COMPENSATION**
>
> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.
>
> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

Based on the evidence before me overall, I find that the Landlord failed to act

reasonably to mitigate their losses by not advertising for the same rate, and by not advertising a May 1, 2021 availability for this studio suite in the residential property.

Accordingly, I find that the Landlord's Application fails for not having provided sufficient evidence to support their claim that they did what was reasonable in the circumstances. I dismiss the Landlord's Application without leave to reapply, pursuant to section 62 of the Act.

TENANT'S CLAIMS

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

Our records show that the Landlord applied for dispute resolution on May 14, 2021, 14 days after the tenancy ended and the Landlord received the Tenant's forwarding address in writing. I find that the security deposit was properly retained by the Landlord in compliance with section 38 of the Act. However, as the Landlord's claim has failed, I Order them to return the Tenant's **$1,100.00** security deposit as soon as possible, as the Landlord no longer has any statutory authority to retain it.

However, I find that the Landlord was remiss in having kept the pet damage deposit in the first place, since they did not apply for compensation for damage done by a pet.

Policy Guideline #31, "Pet Damage Deposits" states:

> **When can a landlord keep the deposit?**
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> Pet damage deposits are generally treated the same as security deposits.
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> At the end of a tenancy, if the tenant agrees in writing, the landlord may keep all or part of the pet damage deposit. At the end of a tenancy, the landlord may keep all or a part of the pet damage deposit to pay an amount previously awarded by an arbitrator for damage caused by a pet and which was still unpaid at the end of the tenancy.

> The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.
> . . .
>
> **When is a deposit repaid?**
>
> As with security deposits, a landlord must return any remaining pet damage deposit and any statutory interest within 15 days after the tenancy ends or the landlord receives the tenant's forwarding address in writing, whichever is later.
>
> A landlord does not have to comply with this 15 day rule if the landlord has applied for an arbitrator's order within the 15 days, in which case the landlord can hold the deposit and any statutory interest until the arbitrator's decision. Similarly, a landlord does not have to comply with the 15 day rule if the tenant fails to provide a forwarding address in writing within a year after the end of the tenancy.
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> If a landlord is required to return a pet damage deposit and fails to do so, the tenant may apply to an arbitrator for an order for double the amount of the deposit plus any statutory interest.

I find that the Landlord did not have any statutory authority to retain the Tenant's pet damage deposit, and therefore, I find that the Landlord has breached section 38 (1) of the Act.

Section 38 (6) of the Act states that if a landlord does not comply with section 38 (1) of the Act, then the Landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Accordingly, as I have found that the Landlord breached section 38 (1) regarding the pet damage deposit, I find that the Landlord must pay the Tenant double the $1,100.00 pet damage deposit, pursuant to section 38 (6) (b) of the Act. I award the Tenant with **$2,200.00** from the Landlord in this regard, pursuant to sections 38 and 67.

Summary

The Landlord was unsuccessful in their claims, as they failed to provide sufficient

evidence to support their burden of proof in this matter on a balance of probabilities. The Landlord's Application is dismissed wholly, without leave to reapply, pursuant to section 62 of the Act.

The Tenant was successful in her claim for recovery of the $1,100.00 security deposit; however, the Tenant did not prove her entitlement to double the security deposit, pursuant to section 38, and therefore, she is awarded only **$1,100.00** from the Landlord

The Landlord breached its obligations under section 38 to return the Tenant's pet damage deposit within 15 days of the end of the tenancy and receiving the Tenant's forwarding address. The Landlord had the option of holding the pet damage deposit for a claim for compensation for damage done by the Tenant's pet(s). However, the Landlord did not make such a claim, but retained the pet damage deposit, anyway.

As a result, the Landlord had breached section 38(1) of the Act and they are required by section 38 (6) (b) of the Acct to pay the Tenant double the $1,100.00 pet damage deposit. As such, the Tenant was awarded $2,200.00 for this claim.

Given her success in her Application, I also award the Tenant with recovery of her **$100.00** Application filing fee, pursuant to section 72 of the Act.

I grant the Tenant a monetary order from the Landlord of **$3,400.00,** as set out above, pursuant to sections 38 and 67 of the Act.

Conclusion

The Landlord is unsuccessful in their Application, as they failed to provide sufficient evidence to prove their claims on a balance of probabilities. The Landlord's Application is dismissed wholly without leave to reapply.

The Tenant is successful in her claim for her security deposit back, but she did not provide sufficient evidence to warrant receiving double the security deposit from the Landlord. However, the Tenant is awarded **$1,100.00** from the Landlord for the return of her security deposit.

The Tenant is successful in her Application for double the return of the pet damage deposit, as the Landlord was not eligible to retain this deposit, given the nature of their claim. The Tenant is awarded **$2,200.00** from the Landlord for the return of double the

security deposit. The Tenant is also awarded recovery of the **$100.00** Application filing fee.

The Tenant is granted a monetary order of **$3,400.00** from the Landlord pursuant to sections 38 and 67 of the Act.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 01, 2021

Residential Tenancy Branch