



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on June 6, 2021 seeking an order to recover the money for unpaid rent and utilities, compensation for damages to the rental unit, and recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 6, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference all hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Tenant did not attend the telephone conference call hearing.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenants with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the Landlord stated, under affirmed oath. that they used a courier to send their package containing the notice and their evidence to the Tenant. This was to the address provided by the Tenant, sent to the Landlord via text message earlier. The Landlord provided an image of the courier service confirmation of delivery on June 25, 2021.

I accept the Landlord's testimony that they sent notice of this hearing via courier and service of the notice and evidence to the Tenant was completed. Based on the submissions of the Landlord, I accept they did this in a manner complying with s. 89(1)(a) of the *Act*; in effect, this is a mode of personal service where the Landlord hired a company to serve the Tenant in person. The hearing thus proceeded in the Tenant's absence.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amount owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damages to the rental unit, 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

The Landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The parties signed the agreement on January 15, 2021 and this was the start-of-tenancy date on a month-to-month basis. The monthly rental amount was \$2,000, payable on the first of each month. The Tenant paid a security deposit of \$1,000. The Landlord returned this security deposit to the Tenant after the end of the tenancy.

The Landlord provided screen images of messages from the Tenant dated May 28, 2021. The Tenant notified the Landlord that the police would be helping them to move to a safe place. With a request for clarification from the Landlord, the Tenant then provided they would be moving out the following week. At that point the Landlord informed the Tenant that one month notice is needed, "as per your rental contract." The Tenant then clarified they had notified the Landlord some days prior, "before 15 days" and an embedded image of that message, undated, shows the Tenant stating, "I will be moving out by the end of this month".

The Tenant's final move-out date, as told by the Landlord in the hearing, was June 2, 2021. Because of the history of conflict, the Landlord was afraid to conduct a meeting to inspect the rental unit in-person with the Tenant on that date, and the Tenant left the key for the rental unit. The Tenant inspected every room of the rental unit after the Tenant's departure.

The Landlord claims one-month rent for the month of June 2021. This is based on the Tenant's very short notice that they would be moving out. The Landlord relied on the *Act* and the relevant portions of the tenancy agreement to state that one-month advance notice was necessary. The 15-day prior notice "still would not have been enough notice" in the Landlord's submission. This claimed amount is \$2,000.

The Landlord also claims \$1,000 for damage to the rental unit. They provided photos showing damage to a countertop becoming unattached from the wall, and holes in the wall behind an opening door. The Landlord also stated that damage from the Tenant's smoking necessitated the entire unit being repainted. The Landlord provided an estimate for amounts associated with the work: cabinet removal and refitting \$300; wall patching \$200; and repaint living room \$500. In the hearing, the Landlord clarified that it was amounts for their own work. This work was completed; however, the dollar amounts provided were estimates for the work.

Analysis

From the testimony and evidence of the Landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the amount of the security deposit paid.

The *Act* s. 45(1) sets out how a Tenant may end a tenancy:

A tenant may end a periodic 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, 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.

In this case, the evidence of the landlord is that the tenant breached the tenancy agreement by leaving on June 2, 2021 after notice some 15 days prior. The Tenant's own confirmation to the Landlord was on May 28th. Under the *Act* and the tenancy agreement, the Tenant was obligated to give notice to end the tenancy for an effective date in line with s. 45(1).

I accept the evidence before me that the Tenant here did not do so. Both the lack of notifying the Landlord in the proper time, and the following non-payment of rent are breaches of the *Act*. The Landlord's loss results from this breach; therefore, I find the Landlord is entitled to the full amount of May rent. This is \$2,000.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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.

The Landlord's claim concerns damages arising from the tenancy and other cleaning costs. To determine the Landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

From the Landlord's evidence, I am not satisfied the value of the damage or loss is as they present in their evidence. The Landlord was not clear on whether this was work they had actually completed or not. The estimates they provided are vague with respect to the amount of time needed, and no accounting for materials. These are not tangible amounts. Additionally, with respect to painting, I am not satisfied based on the Landlord's evidence that a need for painting existed.

Because of the imprecision on this claimed amount for damages, I dismiss this portion of the Landlord's evidence. There is no award for damages to the rental unit.

As the Landlord was moderately successful in this application, I find that the Landlord is entitled to recover \$50, or one-half, of the filing fee they paid for this Application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,050. I provide the Landlord with this Order, and they must serve **this Order** to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with 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: December 7, 2021

Residential Tenancy Branch