



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Hearing package and the landlord acknowledged service of the tenant's evidence. Both parties advised they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Preliminary Issue

The landlord advised that the issue of seeking monetary compensation for an unreturned sofa chair, decorative pillow and lamp, as well as the unclaimed pine wardrobe could be dismissed as the items have been returned to their respective owners. The tenant was in agreement that it could be dismissed and in accordance with rule 6.1, this portion of the landlord's claim was dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenant moved into one of 3 rooms in a rental unit attached to a house. The tenant's then boyfriend already lived in the house on a separate tenancy agreement, paying his own rent. When this tenant moved in, no new tenancy agreement was created or signed and the landlord treated each of the 3 occupants in the rental unit as separate tenancies with each paying their own rent. No condition inspection report was conducted with the tenant at the commencement of the tenancy.

Rent for this tenant was set at \$600.00 per month and the landlord collected a security deposit of \$300.00 at the commencement of the tenancy. The landlord testified that on May 19, 2021, she received a text from the tenant advising that she got another apartment effective June 1, 2021. The tenant vacated the rental unit on May 30th. The landlord testified that she assisted the tenant in getting the new apartment by providing a favourable reference.

The tenant testified that the landlord knew she was planning on moving out. She had to vacate the rental unit because her boyfriend had been charged with domestic violence charges and she was the victim. The boyfriend would not leave the rental unit, so she had no choice but to move. The tenant provided a subpoena as proof of the criminal charge against her boyfriend. The tenant acknowledges she gave the landlord her consent to retain the \$300.00 as compensation for leaving the tenancy without providing a full month's notice.

Analysis

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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 tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and 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, pursuant to section 45(1) of the Act. In other words, if rent is payable on the first day of the month, a tenant can only end a tenancy at the end of the month at least a full month's prior.

In this case, the tenant provided her notice to end tenancy eleven (11) days before the tenancy was to end, breaching section 45(1) of the Act. While section 45.1 provides tenants fleeing family violence with the ability to end a fixed term tenancy with less than a full month's notice (provided they have a confirmation of eligibility statement made by specified parties); no such provision exists for ending a periodic (month to month) tenancies. Tenants are still required to serve their landlord with a full month's notice to end the tenancy before the last day of the prior month. The earliest effective (move-out) date for a notice to end tenancy received on May 17th would be June 30, 2021.

I am satisfied the landlord has suffered a loss of rental income in the amount of \$600.00 for the tenant's failure to provide proper notice in accordance with section 45 of the Act. Pursuant to section 67 of the Act, the landlord is entitled to a monetary order in that amount.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The tenant has agreed that the landlord may retain her \$300.00 security deposit in partial satisfaction of any award I grant to the landlord. As such, pursuant to section 72 of the Act, I order that the landlord may retain the tenant's security deposit.

Item	Amount
Compensation for early notice to end tenancy	\$600.00
Filing fee	\$100.00
Less security deposit	(\$300.00)
Total	\$400.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$400.00**. The tenant must be served with this Order as soon as possible. Should the tenant 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.

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: January 21, 2022

Residential Tenancy Branch