Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL, MNRL

Introduction

The Landlord seeks the following under the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 67 for monetary compensation for loss or other money owed; and
- Return of her filing fee pursuant to s. 72.

The Landlord filed an amendment to her claim on June 6, 2022 in which she reduced the amount claimed and separated the global monetary claim into one for damages to the rental unit and for unpaid rent, both of which are claimed under s. 67 of the *Act*.

N.O. appeared as the Landlord. M.O. is the Landlord's daughter and made submissions on behalf of the Landlord as her agent (the "Agent"). J.P. and G.P. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Agent advised that the Notice of Dispute Resolution was served via registered mail, and the amendment and evidence served via email. The parties confirmed email was an approved form of service between the parties. The Tenants acknowledged receipt of the Landlord's application, amendment, and evidence and raised no objections with respect to service. Pursuant to s. 71(2) of the *Act*, I find that the Tenants were sufficiently served with the Landlord's application materials based on their acknowledged receipt without objection from the Tenant.

The Tenants advised that they served the Landlord with their response evidence by way of email. The Agent acknowledged receipt of two emails from the Tenants: one on June 14, 2022 and another on June 17, 2022. The Agent argued that the second email was served late due to the deeming period involved with service via email.

Rule 3.15 of the Rules of Procedure requires respondents to serve their evidence on applicants at least 7 days prior to the hearing. The hearing took place on June 28, 2022. Therefore, the Tenants had until June 21, 2022 to serve their evidence. As the Landlord acknowledged receipt of the second email on June 17, 2022, the deeming provision for emails set under s. 44 of the Regulations does not apply.

I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Tenants response evidence based on its acknowledged receipt by the Agent.

Preliminary Issue – The Landlord's Amendment

I have reviewed the Landlord's amendment and find that it is sufficiently related to her original application, such that it does not run afoul Rules 4.1 and 2.3 of the Rules of Procedure.

The Landlord provides proof that the amendment was served on June 7, 2022 by providing a copy of the email. As mentioned above, the Tenant's acknowledge its receipt I find that it was served in compliance with Rule 4.6 of the Rules of Procedure.

Accordingly, I find that the amendment was filed and served within the appropriate timelines and permit the amendment.

Issues to be Decided

1) Is the Landlord entitled to an order for unpaid rent?
2) Is the Landlord entitled to compensation for damage to the rental unit?
3) Is the Landlord entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 9, 2021.
- The tenancy was for a 1-year fixed term ending on August 31, 2022 after which point it was to revert to a monthly periodic tenancy.
- Rent of $2,450.00 was due on the first day of each month.
- The Landlord held a security deposit of $1,225.00 and a pet damage deposit of $1,225.00.

A copy of the tenancy agreement was provided by the Landlord confirming these details.

The Agent advised that on November 30, 2021 the Tenants provided written notice to the Landlord stating they would be vacating the rental unit on January 31, 2022. The Tenants confirmed they gave the Landlord notice that they would be vacating and advised that the sought to end the tenancy as they purchased a property.

The Agent argued that the Landlord suffered financial loss due to the Tenants' leaving the rental unit prior to the end of the lease. The Agent advised that the Landlord took out an ad in a newspaper in December 2021. I was directed to a receipt showing that an advertisement was taken out from December 8, 2021 until December 29, 2021 at a cost of $55.65 to the Landlord. Nothing came of the paper ad and the Agent says a Facebook ad was posted in January 2022 and a new tenant moved into the rental unit on March 1, 2022.

The Tenants argued that the rental market is extremely tight within their community and that the Landlord had ample opportunity to find a tenant for February 1, 2022. I am told that the Tenants placed their own ad on Facebook and forwarded contact information to the Landlord for her review. G.F. stated that her sister was interested and that she reached out to the Landlord but never received an application form in response.

The Tenants provide copies of the messages they had with prospective tenants to the ad they placed. They generally involve the Tenant forwarding the Landlord's contact information and one has an exchange in which the presumed to be prospective tenant told the Tenant that the Landlord said they were not renting. The Agent argues that these individuals were not the right fit for the Landlord and that Tenants Facebook ad adversely affected the Landlord's ability to find a new tenant as there were comments to the Tenants ad to the effect that it was fraudulent.

The Landlord seeks the lost rent for February 2022.

There was some dispute regarding the move-out date for the Tenants. The Tenants indicate that they were to conduct a move-out inspection on January 19, 2022 but that the Landlord did not attend the rental unit to do the inspection or receive the keys. According to the Tenants, they returned the rental unit keys to the Landlord by mailing them to her. The Landlord did not deny receiving the keys from the Tenants.

The Landlord advised that she did not return to the rental unit until January 31, 2022. I am told by the Agent that the Landlord filed a separate application related to an unpaid rent claim for January 2022 after issuing a 10-Day Notice to End Tenancy. I was provided with a file number by the Agent and have reviewed that matter, which shows the Landlord obtained an order for possession and monetary award for January 2022 rent on February 4, 2022.

The Landlord confirmed there was no mutual move-out inspection, that the move-out inspection was conducted unilaterally by the Landlord after the Tenants vacated, and that no opportunities were provided by the Landlord for a mutual move-out inspection with the Tenants. The Tenants confirmed they never received the move-out inspection. The Agent argued that there was a breakdown in the Landlord's relationship with the Tenants and the Landlord indicated there were some safety concerns. The Tenants deny the safety concerns.

The Landlord acknowledged receipt of the Tenants forwarding address on March 2, 2022 and returned the security deposit and the pet damage deposit, in full, on March 8, 2022. The Landlord provided copies of the Tenants forwarding address and the e-transfer returning the security deposit and pet damage deposit on March 8, 2022.

The Landlord seeks other monetary compensation in the total amount of $1,132.97 and provide a monetary order worksheet detailing the following expenses:

- Natural Gas (Jan/Feb 2022) $209.84
- Hydro (Jan/Feb 2022) $80.01
- Locksmith $146.58
- Cleaning Supplies $82.62
- Professional Cleaners $546.00
- Newspaper Ad $55.65
- Registered Mail Cost $12.27

The Agent indicated that the Landlord was contacted by the utility service providers sometime in December 2021 and that she was advised that services were to be terminated on December 31, 2021. Under the tenancy agreement, natural gas and electricity were the responsibility of the Tenants. I am told that the Landlord set the account up in her name and incurred natural gas costs of $209.84 and electricity costs of $80.01 for the months of January and February 2022. The Landlord provides copies of the relevant utility invoices over this period.

The Tenants indicate that they contacted the relevant utility companies to end their account in January 2022 and were told the services were already terminated. They deny that they cut off the utility services and emphasized that they still resided within the rental unit such that cutting off service in January would not be prudent.

The Agent advised that the rental unit was left in an unclean state after the Tenants. A series of photographs were provided by the Landlord. The Agent indicates that the Tenants had a dog, which had urinated in the rental unit and defecated on the patio deck, which was not cleaned. The Agent indicated that Landlord obtained cleaning supplies to clean the rental unit herself at a cost of $82.62 but eventually retained a cleaner to come and clean the rental unit at a cost of $546.00. A receipt for the cleaning supplies and an invoice for the cleaner were provided by the Landlord.

The Tenants deny that the rental unit was left in an unclean state, deny feces was left on the deck, and indicate that they cleaned the rental unit top to bottom. They advise that they had the carpets professionally cleaned and provide a receipt in their evidence indicating the carpets were cleaned on January 17, 2022. The Tenants provide a statement from N.A. who lives in a neighbouring residential property. The statement indicates that he gave the Tenants access to his garage such that the carpet cleaners could hook up their equipment to a faucet. It further states that N.A. had seen the interior of the rental unit and was of the opinion that it was in a clean state.

The Agent further advised that the Landlord sought the cost of the registered mail for serving the Notice of Dispute Resolution and for the cost of the advertisement, the receipts for both were provided by the Landlord.

Analysis

The Landlord seeks compensation for loss of rental income and due to claims of the rental unit being left in an unclean state.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlord argues that the Tenants breached the fixed term tenancy. The Tenants essentially admit to doing so by acknowledging the tenancy was for a fixed term and that they gave notice to vacate on November 30, 2021. Section 45(2) states that a tenant cannot end a fixed term tenancy earlier than the date specified in the tenancy agreement, which in this case is August 31, 2022. I find that by issuing the notice on November 30, 2021 and vacating in January 2022, the Tenants breached the fixed term portion of the tenancy agreement in contravention of s. 45 of the *Act*.

The primary question with respect to this portion of the Landlord's claim is whether she took steps to mitigate her damages. Policy Guideline #5 provides guidance with respect to duty to minimize or mitigate their damages. It states the following with respect to the loss of rental income:

> ***Loss of Rental Income***
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> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
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> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.

> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
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> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

The Landlord says that she took out an ad with a newspaper in December 2021 and placed an ad on Facebook in January 2022. The Landlord says that she obtained a new tenant for March 1, 2022.The Tenants argue that there is a tight rental market within their community and the Landlord should have had no issue finding a tenant for February 1, 2022. The Tenants provide copies of messages they say they received from prospective tenants to an advertisement they posted. They argue the Landlord was unresponsive.

I accept that it may be true that the rental market is tight within their community. However, the Tenants' argument is speculative. There are any number of reasons why a tenant may not have been secured for February 1, 2022, which include rental demand for that type of rental unit, the rental unit's neighbourhood, the market rate for that rental unit's rent, or the prospective tenant failing a credit or reference check. With respect to the Tenants argument that the Landlord ignored the people forwarded to her through their advertisement, I accept that the Agent's submission that these people did not work out.

The Landlord's duty to mitigate requires her to demonstrate that she acted reasonably to avoid or minimize her loss of rental income. In this instance, I find that she did just that. The evidence provided by the Landlord shows she took out a newspaper ad in early December 2021, posted an ad on Facebook in January 2022, and secured a new tenant for March 1, 2022. I find that the Landlord mitigated her damages by posting advertisements as soon as was practicable and that she did re-rent the place on March 1, 2022.

I am satisfied that the Tenants' breach of the fixed term tenancy resulted in the loss of rental income for the month of February 2022 and accept that this is equivalent to the rent payable under the tenancy agreement. I find that the Landlord has established this portion of her claim and has proven a loss of rental income in the amount of $2,450.00.

Dealing next with the utility claims advanced by the Landlord, I note that the tenancy agreement indicates that the Tenants were responsible for paying natural gas and electricity as it was not included in rent. The Tenants did not deny that the tenancy agreement put the responsibility for paying these utilities on them.

The Tenants argue that the utilities had been switched over when they contacted the service providers in January 2022. Firstly, even if that were true, it would not absolve the Tenants of their obligation to pay the utilities for natural gas and electricity as per the tenancy agreement. Secondly, I do not find the Tenants to be credible with respect to this argument. The Landlord advised that the Tenants failed to pay rent for January 2022, which prompted her prior application. The Tenants were ordered to pay rent for January 2022. None of this was denied by the Tenants at the hearing. It appears more likely that the Tenants did cut off their service for December 31, 2021, which would coincide with them failing to pay rent on January 1, 2022.

I find that the Tenants breached their obligation under the tenancy agreement to pay the utilities for the months of January and February 2022. The Landlord mitigated her damages by finding a new tenant for March 1, 2022. The Landlord provides invoices showing natural gas costs of $209.84 and electrical costs of $80.01. I accept that the Tenants' breach of the tenancy agreement resulted in the Landlord's loss in these amounts. I find that this portion of the Landlord's claim has also been made out.

Dealing next with the cleaning costs, s. 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

The Landlord says that the rental unit was left in an unclean state. The Tenants say that they cleaned the rental unit and had the carpets cleaned by a professional. They provide a copy of the receipt for the carpet cleaner. The Landlord provides no copy of the move-out inspection report, nor would such a report appear to be of much value as the Landlord failed to comply with the move-out inspection process set out under s. 35 of the *Act*. The Landlord did not provide a copy of the move-in inspection report.

The Landlord provides photographs which is argued to show the rental unit in an unclean state. I have reviewed the photographs provided by the Landlord. With respect, I do not agree. Most of the photographs pertain to scratches in the cabinets and floor. The Landlord is not claiming for damages to the rental unit but for the rental unit being left in an unclean state. The Landlord shows the stove to be unclean. However, that would hardly justify a claim for cleaning the rental unit totalling $628.62. There is mention of dog urine stains on the carpets. However, the Tenants provide clear evidence that they had the carpets cleaned on January 17, 2022.

I place significant weight on the fact that no condition inspection report was provided to me by the Landlord, thus making it impossible to obtain a clear idea of the state of the rental unit when the tenancy ended. I further place significant weight on the fact that the photographs do not demonstrate that the Tenants' left the rental unit in an unclean state. I find that the Landlord has failed to establish that the Tenants breached their obligation under s. 37 to leave the rental unit un a reasonably clean state. The Landlord's claim for the cleaning supplies and the cost of the cleaners is denied.

Looking next to the rekeying costs, Policy Guideline #7 provides guidance with respect to locks and access. It states the following which is relevant to this dispute:

> The Act allows the tenant to request that the locks be changed at the beginning of a new tenancy. The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental unit.
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> (Emphasis Added)

Policy Guideline #7 is clear that the Landlord bears the cost of rekeying a rental unit between tenants. Further, the Tenants indicate that they returned their keys to the Landlord via registered mail. The Landlord did not say she never received the keys. The Tenants did not breach their obligations under s. 37 of the *Act*. As there was no breach of the *Act* by the Tenants and given that it is the Landlord's obligation to pay for the cost of rekeying a lock between tenants, I find that the Landlord has failed to make out this portion of their claim. The cost for the locksmith is denied.

Looking at the newspaper advertisement cost, I accept that the Landlord incurred this expense as a direct result of the Tenants breach of the fixed term lease. However, it is not clear to me why the Landlord would incur the cost of a newspaper advertisement given the wide array of free advertising options open to her, including Facebook, Craigslist, or Kijij. Though the Tenant breached the tenancy agreement, I find that the Landlord did not mitigate her damages with respect to the newspaper advertisement as she could utilise free advertising. Indeed, the Landlord indicates she did so in January 2022. Accordingly, that this portion of the Landlord's claim is similarly denied.

Finally, the Landlord seeks to recover the cost of serving her application via registered mail. It is highly unusual for an applicant to seek the cost of sending registered mail for their application. In practice, to permit such a claim would unfairly benefit applicants as respondents could not make a corresponding claim for serving their evidence if an applicant's claim is dismissed. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in an application. Respondents, having not filed an application, could not advance a claim for the costs of serving their response evidence. Cost claims for applications are limited to the return of the filing fee for this reason. I find that the Landlord shall bear the cost of serving her application.

In total, the Landlord has established her claim for the following amounts:

Item	**Amount**
Lost Rent for February 2022	$2,450.00
Natural Gas for January/February 2022	$209.84
Electricity for January/February 2022	$80.01
TOTAL	$2,739.85

Conclusion

The Landlord has established a monetary claim under s. 67 of the *Act* in the amount of $2,739.85.

The Landlord was largely successful in her claim. I find that she is entitled to the return of her filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's $100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenants pay **$2,839.45** to the Landlord, representing the total monetary award including the filing fee ($2,739.45 + $100.00).

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with 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: June 29, 2022

Residential Tenancy Branch