



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-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 damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant's son L.E. represented the tenant in the hearing. B.B. represented the landlord as the property manager.

L.E. acknowledged receipt of the landlord's application for dispute resolution including evidence submissions. B.B. acknowledged receipt of the tenant's evidence package in response to the application. At the outset of the hearing, B.B. raised no issues with respect to the timing of the service of the tenant's evidence submissions. Towards the end of the hearing, B.B. raised an issue that the tenant's evidence package was served four days late. B.B. did not make any submissions on how the landlord was prejudiced by this late evidence submission. As L.E. had already made submissions on behalf of the tenant, prior to the late evidence issue being raised, I allowed the evidence submissions and find there was no prejudice to the landlord in doing so.

Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security and/or deposit in partial satisfaction of the monetary award requested?

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

Background & Evidence

The tenancy began December 19, 2020. The lease was for a one year fixed term ending December 31, 2021 at which time it would continue on a month to month basis, or another fixed length of time, unless the tenant gave notice to end of at least one clear month. The monthly rent was \$1825.00 and the tenant paid a security deposit of \$912.50 and a pet deposit of \$912.50 at the start of the tenancy. A forwarding address was provided by the tenant on December 23, 2021. The landlord made an application for dispute resolution claiming against the security and pet deposit within 15 days of the end of the tenancy. The landlord continues to retain both the security and pet deposit.

The landlord is claiming \$42.00 for one hour of cleaning work. B.B. testified this was for dirtiness related to the pet in the unit. B.B. testified the dirty area that required cleaning was in the kitchen area where the dog food and water bowl were kept. An invoice was submitted.

L.E. disputed this claim and submits the invoice does not specify what cleaning work was done, no photo evidence was submitted by the landlord, the move-out report doesn't specify what cleaning work was required and makes no mention of pet related damage. L.E. submits the tenant should be awarded double the pet deposit as a penalty as the landlord withheld the pet deposit in error.

The landlord is claiming \$78.75 for one hour of labour to repair drywall in the living room area. An invoice was submitted. L.E. did not dispute this claim.

The landlord is claiming \$912.50 as liquidated damages for the tenant breaking the fixed term lease early. This was broken down as \$282.50 for a featured ad invoice and \$630.00 paid as commission to a leasing agent for tenant placement services. Invoices were provided. B.B. testified that the tenant provided formal notice to end the tenancy December 23, 2021 with an effective date of December 31, 2021. L.E. testified that due to the short notice the landlord had to kick advertising into high gear in order to re-rent

the unit as soon as possible. L.E. testified the landlord was able to re-rent the unit for January 1, 2022.

L.E. Submits that the rental advertisement cost is the only true cost borne by the landlord in an effort to re-rent the unit. L.E. submits that the landlord was aware of the tenant's intention to vacate much sooner as was evidenced by a December 5, 2021 rental advertisement. L.E. references an e-mail dated December 1, 2021 by which the tenant provided notice to not renew the lease. L.E. submits that as such the tenant was only one day late in providing notice as it should have been provided on November 30, 2021. L.E. submits that as such the landlord's potential to re-rent was essentially the same as if notice had been provided on time. L.E. further submits that the cost of advertising the unit is a regular cost the landlord would have incurred in either event and that it was not the direct result of the tenant providing one day late notice. L.E. further submits that the tenant placement invoice lacks any specificity as to the actual associated costs but rather is a penalty.

In reply, B.B. testified that the complex contains 300 rental unit so the December 5, 2021 ad was not specifically related to the tenant's unit and the ad specifically states that a number of units are available. B.B. submits that the e-mail sent by the tenant on December 1, 2021 was not proper written to end the tenancy and that formal written notice was not received until December 23, 2021. B.B. submits that the tenant placement invoice represents the commission for securing a tenant.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section a party claiming compensation must do whatever is reasonable to minimize the loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security and/or pet deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days

of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the landlord has failed to establish the claim for cleaning related costs. There is no specific mention in the move-out report as to what areas of the unit were not left reasonably clean nor did the landlord submit any photo evidence in support of this claim.

Further, I find as there is no reference at all to any pet related damage in the move-out condition report or in the landlord's application, I find the landlord was not entitled to retain the tenant's pet deposit and must now pay the tenant double the amount. The tenant is awarded \$1825.00 which is double the original pet deposit of \$912.50.

I find the landlord is entitled to \$78.75 for drywall repair as this amount was not disputed by the tenant.

Clause 3 of the Tenancy Agreement Additional Terms addresses liquidated damages. This clause states that the tenant would be responsible for liquidated damages if the tenant ends the tenancy prior to the end of the term stipulated in the tenancy agreement. The tenancy agreement stipulates an end date of December 31, 2021. In this case the tenant gave notice to end the tenancy effective on this same date. As such, I find as the tenant did not end the tenancy "prior" to the end term of the fixed term lease, therefore the liquidated damage clause does not apply. Liquidated damage clauses are generally intended to compensate the landlord for an agreed to estimate of the costs associated with having to re-rent a premises in the event of a tenant breaking a fixed term lease early. I find it is not appropriate to invoke this clause in a case where the tenant has carried out the full original agreed upon lease term.

Rather, the appropriate question is whether the tenant provided sufficient notice in accordance with the tenancy agreement and Act to end the tenancy and, if not, what losses were suffered by the landlord.

Section 45(2) of the Act sets out the following:

A tenant may end a fixed 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(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.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

I find the tenant's e-mail notice on December 1, 2021 does not constitute written notice as required by section 52 of the Act. In either event, this e-mail notice would still have been a day late and not in compliance with section 45. The tenant provided formal written notice to the landlord on December 23, 2021 to end the tenancy effective December 31, 2021. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was January 31, 2022.

I accept the landlord's claim for \$282.50 for the featured advertisement cost. I find the landlord incurred this expense as a result of the short notice as they took extraordinary steps to get the unit re-rented as soon as possible.

I dismiss the landlord's claim for the tenant placement fee as I find the landlord would have incurred this cost regardless of the tenant providing sufficient notice.

As the landlord was only marginally successful in this hearing, I do not award the filing fee to the landlord.

Total entitlement for Landlord: \$361.25 (\$78.75 + \$282.50)

The landlord continues to hold a security deposit in the amount of \$912.50. The landlord is permitted to retain \$361.25 from this security deposit in full satisfaction of the monetary award. The balance of the security deposit of \$551.25, plus double the pet deposit of \$1825.00 is to be returned to the tenant forthwith.

The tenant is hereby granted a Monetary Order in the amount of \$2,376.25.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2376.25. Should the landlord 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: August 29, 2022

Residential Tenancy Branch