



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The Landlord filed an application for dispute resolution (the “Application”) on December 23, 2021 seeking compensation for rent amounts owing, monetary loss/other money owed, and damage to the rental unit. They also seek reimbursement 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 August 2, 2022. The Landlord and the Respondent Tenant attended the conference call hearing. I explained the process and offered each party the opportunity to ask questions. After confirming disclosure of the Notice to the Respondent, and each party’s evidence served to the other as per the *Residential Tenancy Branch Rules of Procedure*, I proceeded with the hearing as scheduled.

Issues to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, for damages to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and the Tenant each provided a copy of the tenancy agreement that they both signed on May 18, 2021. The tenancy began on June 1, 2021 for the fixed term to

end on May 31, 2022. The rent amount was \$2,600 payable on the first of each month. The Tenant paid a security deposit amount of \$1,300.

The tenancy agreement at the beginning sets out that it is “made to conform to the provisions of the Residential Tenancy Act and Amendments.”

Item 8 in the agreement specifies in subsection (d) that “Both the Tenant and Landlord agree that the tenancy shall end at NOON of the last day of the tenancy.” Otherwise, the Landlord and Tenant may mutually agree to end the tenancy, or the Landlord may end the tenancy as per the *Act*.

A specialized item in the agreement (Item 22) provides for “the sum of half a month’s rent plus GST” if the Tenant ends the fixed term tenancy before the end of the original term. This is “Liquidated Damages and not as a penalty to cover the administrative costs or [*sic*] re-renting the rental unit.”

In a written statement they prepared for this hearing, the Tenant pointed out that this portion of the agreement was written using *words*, as opposed to an exact dollar amount. This is a “tricky tip” for those challenged by a different first language, *i.e.*, not English. They submit this fee should be the Landlord’s responsibility.

On their Application, the Landlord provided the tenancy end-date of December 20, 2021. The Tenant in the hearing confirmed this was the date they inspected the rental unit together with the Landlord and returned the keys. The emails submitted as evidence by the Tenant show this meeting date as final.

The Landlord presented that the Tenant advised of their desire to end the tenancy on December 1, 2022; this is shown in the email provided by the Tenant with that date. By December 2, the Landlord requested the transfer of one-half month’s rent plus GST, reproducing the Liquidated Damages item from the tenancy agreement in their message to the Tenant. As claimed by the Landlord here, that amount is \$1,365. The Landlord also stated: “As you know, if a new tenant is not found and we do not agree to end the lease, then you must continue to make rent payments, on a monthly basis as usual, until May 31, 2022.”

By December 4, the Tenant advised the Landlord of their December 20 move-out date. The parties met on that date at the rental unit to inspect its condition. In their evidence the Landlord provided the “Condition Inspection Report” that the parties jointly signed and on which they provided final summary comments on the state of the rental unit.

The Landlord noted “Paint touchup required throughout” and “Professional cleaning needed”; the Tenant noted “Some small thing, need paint later.” In the hearing, the Tenant clarified that their impression was that the unit would need paint again in 2 years or 5 years. The Tenant stated they cleaned the unit very well by the time of the inspection on December 20.

With their Application, the Landlord provided an estimate of \$600 for the total amount of work involved after the tenancy ended; this was \$350 for cleaning and \$250 for painting. After completion of the work, the Landlord paid \$306.11 for painting including \$66.11 for materials, and \$315 for “unit move out clean”. The Tenant in the hearing stated their disagreement with this final cost amount. In a written statement, the Tenant stated they “returned the rental unit in a reasonably clean state as required by the Act”, and they “told [the Landlord] we will negotiate about professional cleaning service . . . and deduction in my deposit . . . I think around \$200 to \$300.”

In their reply email to the Tenant on December 2, the Landlord also stated: “As you know, if a new tenant is not found and we do not agree to end the lease, then you must continue to make rent payments, on a monthly basis as usual, until May 31, 2022.” The Landlord claimed this full amount for January 2022 rent because they had not found a replacement tenant by January 1, and not until February 1. In the Landlord’s submission, this is entirely owing to the Tenant advising the Landlord of ending the tenancy with less-than-one-month’s notice, and despite no provision in place for the Tenant to end the tenancy in advance of the full fixed term set to end on May 31, 2022.

In their written statement, the Tenant set out that the Landlord requested the keys in return on December 20, so they understood this meant the Landlord had a new tenant in place. They found out after the inspection that the Landlord did NOT have a new tenant waiting. The Tenant’s last communication to the Landlord on this was that they should maintain occupancy through January. The Tenant felt it was their right to live there, with the rental unit actually closer to their workplace; however, they did not receive a response from the Landlord on this point.

The Tenant also described their efforts at assisting the Landlord to obtain a new tenant. The emails show each instance of the Tenant accommodating the Landlord’s scheduling of showings of the rental unit to prospective tenants. They submitted copies of communication they had with prospective tenants, passing the basic introduction info to the Landlord for their perusal. In one instance, the Landlord stated they would not be able to attend, but “you [i.e., the Tenant] can show the unit if you want.” The Tenant

pointed to the Landlord's increase in the rent amount as affecting the market for available interested prospective tenants.

Analysis

I find the evidence clearly establishes as fact that there was a fixed-term tenancy agreement in place between the parties. The *Act* s. 45(2) governs in this situation, meaning the Tenant had to provide a notice to end the tenancy effective on a date that was not earlier than one month after the date the Landlord receives the notice, on day prior to rent payment day, and not earlier than the date specified in the tenancy agreement as the end of the tenancy.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss 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.

I find the Tenant did not provide the Landlord adequate notice to end the tenancy in December 2021. The tenancy agreement item 22 applies in this situation. Normally a liquidated damages clause is not enforceable or applicable in a situation where the Landlord does not provide evidence on the amount of work involved with obtaining new tenants. Here, I find the Landlord provided enough evidence to show they expended considerable effort at obtaining new tenants. As shown in the Tenant's own evidence, there were a lot of showings on a priority basis to obtain new tenants for the rental unit. I find the cost to the Landlord, as well as their own effort at ensuring the readiness and availability of the rental unit for showings, as well as dealing with the closing out of this tenancy, was a considerable cost to the Landlord, and results from the Tenant violating the *Act* and the tenancy agreement by ending the tenancy in the manner they did. I find the amount of one-half month's rent is suitable compensation for this effort. I so grant

the Landlord the amount of \$1,300 only; they did not provide a calculation of the GST amount.

The Tenant did raise a concern about this portion of the agreement being written without an indication of an exact amount. I find the agreement was written using a template, and I find it more likely than not this was done so in order to ensure compliance with the *Act* in as comprehensive a way as possible. I find there was no prejudice to the Tenant where the amount was not specified and there was no ulterior motive by the Landlord at play in this situation.

The Landlord provided an accurate and timely assessment of the condition of the rental unit, ensuring a final condition inspection meeting was in place with the Tenant present at the end of the tenancy. They are therefore entitled to claim against the security deposit they are holding, following both s. 24 and s. 36 of the *Act*.

I find the Landlord presented sufficient evidence to show the need for painting within the rental unit. This is attributable to markings left on the walls throughout the rental unit. Though the Tenant stated they provided cleaning of the rental unit, and the unit in any event would require paint within 2 or 5 years, I find that does not account for crayon and other markings as shown in the Landlord's photos. This requires painting, and I find the amount claimed by the Landlord here shows it was a "touch-up" as opposed to a complete repainting of the rental unit. I so award the Landlord the amount of \$306.11 which is a reasonable amount they actually spent on paint for the rental unit at the end of the tenancy.

The Landlord provided photos showing the need for some incidental cleaning within the rental unit; however, I do not see the photos attached as warranting the complete rental unit clean-up that they paid for. It is not known if the Tenant had the opportunity to correct these more incidental clean-ups; judging from the photos, they appear to be items that could have been addressed at the moment of the inspection meeting. For this individual cost, I find that a damage or loss did not exist; therefore, I make no award to the Landlord for this portion of their claim.

As above, I find the Tenant violated s. 45 of the *Act* as well as the tenancy agreement by ending the tenancy before the end of the fixed term. I award the full rent amount for January 2022 to the Landlord for this reason. I understand the Tenant made efforts to assist the Landlord to find new tenants; however, the Tenant's evidence does not show it amounted to anything more other than messaging with potential new tenants and being aware of the Landlord needing to show the rental unit. This is a minimal effort

when compared to the situation the Landlord was facing in having a secured rental income jeopardized by the Tenant ending the tenancy in the manner they chose here. The reason for having a fixed-term tenancy is to *prevent* this kind of loss to the Landlord, and the *Act* has the provision in place in s. 45(2) precisely for this reason.

Finally, the Tenant presented that they requested access to the rental unit for January 2022. The Tenant did not present how they were so flexible in their plans that they could have continued to reside in the rental unit, despite wanting to end the tenancy and move out. I find this does not affect the amount legally owed to the Landlord for the Tenant breaching the *Act* and the tenancy agreement. The Landlord was entitled to take possession of the rental unit based on the Tenant wanting to end the tenancy in the manner they did.

Because the Landlord was largely successful in this Application, I grant reimbursement of the \$100 Application filing fee, added to the balance set out immediately above.

I find the Landlord is entitled to the amount of \$4,306.11, resulting from the Tenant violating the terms of the tenancy agreement and the principles governing this tenancy as set out in the *Act*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of \$4,306.11. After setting off the security deposit amount of \$1,300, this leaves a balance remaining of \$3,006.11. I am authorizing the Landlord to keep the security deposit as compensation and award the balance with a Monetary Order.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,006.11.

I provide the Landlord with this Monetary Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in 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: August 3, 2022