



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on August 1, 2021 for a term of two years. The tenancy ended on April 30, 2022 after the tenant gave notice on April 5, 2021 by email. The landlord submitted a copy of the email sent by the tenant. Monthly rent was set at \$2,400.00, payable on the first of the month. The landlord collected a security deposit of \$1,200.00, and a pet damage deposit of \$400.00, which the landlord still holds.

The landlord was able to re-rent the rental unit as of June 15, 2022 for \$2,400.00 per month. The landlord clarified their monetary claims in the hearing, and confirmed that they are only seeking to retain the security and pet damage deposits in satisfaction of the lost rental income and damages caused by the tenant. The landlord testified that they lost over a month and half in rental income due to the early end of this tenancy, plus \$985.00 in order to repair the rental unit.

The landlord testified that they did not perform a move-in inspection, but provided a copy of the move-out inspection report, photos, as well as an invoice to support their losses.

The tenant does not dispute that they moved out before the end of the fixed term tenancy. The tenant testified that they had allowed the landlord to show the rental unit to prospective tenants, and never saw any advertisements for rent.

The tenant disputes causing any damage other than two holes, which the tenant estimates to be approximately \$50.00 per hole.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *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.

While the tenant did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant regarding this tenancy. The tenant moved out earlier than the date specified in the tenancy agreement, and less than one month after the landlord received the notice.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I find that a result of the tenant's early end of this tenancy, the landlord suffered a monetary loss of rental income for May 2022 and half of June 2022, for a total monetary loss of \$3,600.00. I find that the landlord mitigated this

loss by advertising the rental unit and filling the vacancy as soon as possible. Although the tenant denies seeing any advertisements for rent, I find that the landlord was able to re-rent the rental unit within a reasonable amount of time, which demonstrates that the landlord fulfilled their obligation to mitigate their losses. I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for the remainder of the fixed-term, as is required by section 7(2) of the *Act*. Accordingly, I allow the landlord their monetary claim for loss of rental income. As the landlord is only seeking a monetary order equivalent to the deposits plus the filing fee, I allow the landlord's monetary claim of \$1,600.00 for the lost rental income plus \$100.00 for the filing fee.

The landlord is also seeking a monetary order for losses related to damage caused by the tenant. 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

In light of the disputed testimony and evidence before me, I am not satisfied that the landlord had sufficiently supported the claims made. The tenant disputes causing damage other than the two holes. In the absence of any move-in inspection report, I have no way of ascertaining the true condition of the home at the beginning of this tenancy, and whether the damages claimed were due to the negligent or deliberate actions of the tenant.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

6.6 The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

I find that the landlord failed to meet the standard of proof required to support their claims for damage. Furthermore, the landlord confirmed in the hearing that they did not

wish to pursue a monetary claim exceeding the value of the deposits. Accordingly, the landlord's claims are dismissed without leave to reapply.

The landlord continues to hold the tenant's security and pet damage deposit of \$1,600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the deposits satisfaction of the monetary award for loss of rental income.

Conclusion

I allow the landlord to retain \$1,600.00 of the tenant's security and pet damage deposits to offset the monetary award granted for loss of rental income. The landlord's application to recover monetary losses for damage is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$1200.00 in the landlord's favour in order to recover the filing fee.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 12, 2022

Residential Tenancy Branch