



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The landlord testified that the fixed term tenancy was to begin on May 1, 2022 and to end August 31, 2021. The monthly rent of \$350.00 was due on the first day of the month. The tenant paid a security deposit of \$175.00 which the landlord still holds. The landlord testified that this a shared accommodation with other tenants. The landlord advised the tenant prior to her moving in that there were a couple of disruptive tenants living in the home that would soon be moving out and that it might be best if she lived somewhere else for a few days.

The landlord testified that the tenant did not move into the home until May 8, 2021 and that she was reimbursed the rent for the days she did not occupy the unit. The landlord testified that the window that was broken was fixed on May 6, 2021; two days before the tenant moved in as reflected in his evidence. The landlord testified that the tenant gave short notice near the end of May that she would be moving out on May 31, 2021. The landlord testified that he attempted to rent the unit as soon as possible and continually advertised the unit, but to no avail. The landlord is seeking the loss of revenue for three months plus the filing fee for a total claim of \$1150.00.

The tenant gave the following testimony. The tenant testified that she didn't feel safe in the unit due to the previous bad reports she had heard. The tenant testified that there was a window that was broken until it was repaired sometime after May 17, 2021. The tenant testified that she did not address her concerns with the landlord and decided it would just be better to end the tenancy and move on.

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. **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 provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from May 1, 2021 August 31, 2021.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, she could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on May 31, 2021, before the completion of the fixed term on August 31, 2021. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement immediately. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly that it was a shared accommodation and the concerns surrounding the Covid – 19 pandemic. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks three months of rental loss for June 2021-August 2021; inclusive the period during which the property could not be re-rented due to the tenant's breach. Accordingly, I find that the landlord is entitled to \$1050.00 for rental loss. The landlord is also entitled to the recovery of the \$100.00 filing fee for this application. Although the landlord did not apply to retain the security deposit, applying the offsetting provision in accordance with section 72 of the *Act*, I order that the landlord retain the security deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$1150.00. I order that the landlord retain the \$175.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$975.00. This order may be filed in the Small Claims 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: October 24, 2022

Residential Tenancy Branch