



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL, MNDL, MNDCL, FFL

Introduction

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

- and a monetary order for money owed or compensation for damage or loss 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

While the landlord's agent DC ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 1:53 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on by way of registered mail on July 4, 2022 to the forwarding address confirmed through the services of a skip tracer. The landlord provided Canada Post tracking numbers in the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on July 9, 2022, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses and money owed?

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.

The landlord provided the following testimony. This fixed-term tenancy began on October 1, 2021, and was to end on October 1, 2022. Monthly rent was set at \$2,550.00, payable on the first of the month. The landlords still hold a security deposit of \$1,275.00. The tenancy ended on January 25, 2022 after the tenant was served with a 10 Day Notice for Unpaid Rent on January 15, 2022.

The landlords submitted a monetary order worksheet requesting the following losses and money owed:

Item	Amount
Rent owed as of November 2021 (landlord had offset the security deposit of \$1,275.00 on the original monetary order worksheet)	\$1,941.00
Outstanding December Rent	2,080.00
Unpaid January 2022 rent	2,550.00
Loss of Rent-February 2022	1,275.00
Unpaid Utility Bill- Gas	304.70
Breaking Lease	1,275.00
Damages & Cleaning (withdrawn at hearing, with leave to reapply)	500.00
Carbon Monoxide Detector	100.00
Filing Fee	100.00
Interest for overdue rent	400.00
Less Security Deposit Held	-1,275.00
Total Monetary Order Requested	\$8,750.70

The landlord testified that the tenant only paid a portion of the November and December rent, and no further rent was paid after that. The landlords were able to re-rent the rental unit as of February 15, 2022. The landlords are seeking a monetary order for the unpaid rent and loss of rental income. The landlords are also seeking a monetary order for unpaid utilities, a missing carbon monoxide detector, interest for the unpaid rent, and a

\$1,275.00 “break lease fee”. The landlords submitted in evidence a copy of utility bill that remains unpaid as well as text messages and a copy of the tenancy agreement.

The landlords withdrew their claim for damages and cleaning during the hearing, and requested leave to reapply. This portion of the landlords’ claims was not considered for this hearing.

Analysis

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.

I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords 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. The

tenancy ended on January 25, 2022, nine and a half months before the end of the fixed term tenancy.

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*. The evidence of the landlords is that they were able to mitigate their losses and re-rent the suite as of February 15, 2022. I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlords' monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlords to recover \$1,275.00 of lost rental income for February 2022.

The landlords are also seeking a monetary order in the amount of \$1,275.00 for the breaking of the lease. I note that a tenancy agreement may contain a Liquidated Damages Clause, which is a genuine pre-estimate of losses associated with breaching a tenancy agreement.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...

I have reviewed the written tenancy agreement submitted by the landlords, and I note the absence of a Liquidated Damages Clause, or a similar clause related to the breaking of the lease. I am not satisfied that the agreement clearly stipulates that the tenant would be responsible for liquidated damages or a “lease break fee” in the amount of \$1,275.00 in the event that the tenant ended the tenancy before the end of the fixed term. In order to claim for this amount, both parties must enter into an agreement that the tenant must pay the sum indicated on the agreement in the event of a breach of the tenancy agreement. I must then consider whether this stipulated sum meets the requirements as set out in the policy guideline above.

In this case I am not satisfied that the landlords had clearly stipulated on the tenancy agreement that the tenant would be responsible for the amount claimed by the landlords. The landlords had already applied for, and were granted, a monetary order for loss of rental income for February 2022. I find the landlords have failed to support any additional losses amounting to \$1,275.00, and dismiss this portion of the landlords’ claim without leave to reapply.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

As the landlords were successful in their application, I am allowing the landlords to recover the filing fee from the tenants.

I am satisfied that the tenant failed to pay the outstanding rent for this tenancy. Accordingly, I allow the landlords a monetary order for unpaid rent. I am also satisfied that the tenant failed to pay the outstanding utility bill, and I also allow the landlords’ claim for unpaid utilities. The landlords made an additional application to recover interest on the unpaid rent. I am not satisfied that this loss was sufficiently supported in evidence, and I dismiss this claim without leave to reapply.

The landlords provided undisputed testimony that the carbon monoxide monitor was missing. I am satisfied that the landlords had to replace this item, and allow the landlords’ application of \$100.00 to replace the carbon monoxide monitor.

As the landlords' application had merit, I allow the landlords to recover the \$100.00 filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary awards granted.

Conclusion

The landlords withdrew their claims for damages and cleaning. No findings were made in relation to this portion of the landlords' application. Liberty to reapply is not an extension of any applicable timelines.

I issue a Monetary Order in the amount of **\$7,075.70** in the landlords' favour for the monetary orders granted in the table below:

Item	Amount
Rent owed as of November 2021	\$1,941.00
Outstanding December Rent	2,080.00
Unpaid January 2022 rent	2,550.00
Loss of Rent-February 2022	1,275.00
Unpaid Utility Bill- Gas	304.70
Carbon Monoxide Detector	100.00
Filing Fee	100.00
Less Security Deposit Held	-1,275.00
Total Monetary Order	\$7,075.70

The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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.

I dismiss the remainder of the landlords' application without leave to reapply.

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: November 03, 2022