



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$2,350.00; a monetary order of \$920.23, as compensation for damages; a monetary order of \$2,400.00 for other damage or compensation for other damage under the Act, retaining the security deposit to apply to these claims; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, A.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing, the Agent was given the opportunity to provide evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with these Application and Notice of Hearing documents by email, sent on March 31, 2022. He indicated that this was the email address with which he normally communicated with the Tenant. He said he

served the Tenant with the Landlord's evidentiary submissions via email on November 8, 2022. The Agent submitted copies of these emails with the respective documents attached. Based on the evidence before me in this matter, I find that the Tenant was served with the required documents and evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application and he confirmed these in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised the Agent that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed that the fixed-term tenancy began on June 1, 2021, and was scheduled to run to July 30, 2022. He said the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$2,350.00, due on the first day of each month. He said the Tenant paid the Landlord a security deposit of \$1,175.00, and no pet damage deposit. The Agent said that the Landlord still holds the security deposit in full to apply to these claims.

#1 BROKE LEASE WITHOUT ADEQUATE NOTICE → \$2,350.00

In the hearing, the Agent explained the first claim, as follows: "She started the lease on June 1, [2021], and she broke the lease by ending the tenancy early on November 29, 2021."

The Landlord submitted a copy of an email exchange between the Tenant and the

Landlord, which included [reproduced per original]:

From Tenant to Resident Manager, S.H., dated October 30, 2021:

This email is in regards to cancelling my Lease for the end of November 2021. Please advise what the next steps are.

From Resident Manager to the Tenant dated November 1, 2021:

I am sorry to hear you are planning on leaving [the residential property]. Please fill the attached notice and send it back either by email or by dropping it off at the concierge desk.

As you are aware breaking the lease comes with some cost. To help you better understand the cost involved, I made this break down:

1. If you break your lease prematurely and before your lease end date, you are responsible to pay for liquidated damages in the amount of your one full month rent, \$2350.00 (see insert from your lease)

[inserted clause 16 from tenancy agreement]

2. Also, if you break your lease prematurely, and if you received one month rent free you must pay for reimbursement of that month. In your case June 2021 rent was free so you will have to pay another \$2350.00. Please see insert from your concession agreement:

[inserted clause 6 from concession agreement]

3. In addition to above costs tenants are responsible to pay the rent for all months that are lost in revenue until the unit is re-rented, or until the end of the lease whichever comes first. In worst case scenarios, we had tenants covering the following month rent, but we generally manage to re-rent these units quick as the building and the area is pretty in high demand.

Just to wrap up the basic cost of breaking the lease in your case would be roughly \$4700.00 excluding the following month of rent. If by any chance the unit is not rented your fee will be \$7050. These fees should need to be paid prior [to] your move out date.

In the hearing, the Agent pointed to sections 7 and 8 of the lease agreement – saying that these explain what would happen if the Tenant ended the lease improperly. The Agent said that the building manager went through the relevant sections of the tenancy agreement with the Tenant, as well as setting out what the consequences are to breaching the agreement: liquidated damages, loss of rent, re-renting unit and fees to the leasing agent.

However, on reviewing the tenancy agreement, I note that section 7 addresses the rules involving physically moving in and out of the residential property. Section 8 addresses the Tenant's liability for her permitted guests, how long guests can stay, and that the Tenant may not conduct any commercial or non-residential activity in the premises.

However, section 16 addresses the pertinent matters:

16. BREAKING OF TENANCY AGREEMENT

- 16.1 In the event the Tenant terminates this Tenancy Agreement prior to the Fixed-Term End Date or otherwise contrary to the Act, the Tenant shall pay the Landlord, as liquidated damage for loss of rent and additional expenses that would be incurred by the Landlord in connection with re-letting the Premises to a new tenant, the following amount:

\$2350.00 (the "**Liquidated Damages Amount**")

The Landlord and the Tenant acknowledge and agree that the Liquidated Damages Amount is a genuine pre-estimate of such loss of rent and additional expenses that would be incurred by the Landlord in connection with re-letting the Premises to a new tenant.

For greater certainty and without limiting the foregoing, the Landlord and the Tenant acknowledge and agree that:

- (a) The Liquidated Damages Amount does not, in any way, relate to damages other than those relating to such loss of rent and additional expenses that would be incurred by the Landlord in connection with re-letting the Premises to a new tenant; and
- (b) This Section does not affect or otherwise limit, in any way, the rights of the Landlord at law or in equity, to make a claim for or

otherwise seek any other damages from the Tenant in connection with the tenancy coming to an end, including without limitation, any losses or damages relating to physical damage to the Premises.

This page of the tenancy agreement was initialled by the Tenant.

#2 COMPENSATION FOR DAMAGE CAUSED DURING TENANCY → \$920.23

The Agent explained that this claim was for needed paint touch ups and the repair of a damaged patio door blind. However, in the hearing, the Agent said that the Landlord does not have any photographs of the damage, and that, therefore, they are willing to drop this claim.

#3 COMPENSATION - MONETARY LOSS/OTHER MONEY OWING → \$2,400.00

The Agent pointed out the Concession Agreement signed by the Parties (and addressed in the above noted end-of-tenancy email). The Agent said that this Agreement has two parts, the first of which grants the Tenant her first month free. However, the Agent noted that the second part of the Concession Agreement states:

6. The Tenant agrees that its right to benefit from the Concession is contingent upon the Tenant's full compliance with all terms and conditions of the Tenancy Agreement. If the Tenant fails to fulfill any terms or conditions of the Tenancy Agreement, including but not limited to, completing the full term of the lease, paying monthly rent on or before the 1st day of each month during the tenancy, or allowing an unauthorized occupant and/or pet to reside in the Premises, the Tenant understands and agrees that the Concession(s) stated herein will be rescinded and the Tenant shall immediately reimburse the Landlord for the full amount of the Concession, in addition to any and all other amounts due under the Tenancy Agreement.

The Agent said that based on this, the Tenant owes the Landlord another \$2,350.00. I note, however, that the Landlord applied for recovery of \$2,400.00 for this claim. The Agent did not address this discrepancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 BROKE LEASE WITHOUT ADEQUATE NOTICE → \$2,350.00

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45 (2) deals with ending 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Given the undisputed evidence before me regarding the fixed-term tenancy agreement, the Building Manager's warning of the consequences of breaking this agreement, and the consistency of these consequences with section 45 of the Act, I find the Landlord is successful in this claim. I, therefore, **award the Landlord with \$2,350.00**, pursuant to sections 45 and 67 of the Act.

#2 COMPENSATION FOR DAMAGE CAUSED DURING TENANCY → \$920.23

The Landlord has dropped this claim, given a lack of evidence of damage. Accordingly, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#3 COMPENSATION - MONETARY LOSS/OTHER MONEY OWING → \$2,400.00

Based on the undisputed evidence before me in this regard, I find that the Tenant is responsible for reimbursing the Landlord for the compensation she received from the

Landlord pursuant to the Concession Agreement. I, therefore, **award the Landlord** with **\$2,350.00** from the Tenant pursuant to section 67 of the Act.

As the Agent did not explain why the Landlord claimed **\$650.00** more than the amount by which the Tenant benefited from the Concession Agreement or \$2,400.00, I have dismissed that portion of the claim without leave to reapply, pursuant to section 62 of the Act.

Summary and Set-Off

I find that these claims meet the criteria under section 72 (2) (b) of the Act to be off set against the Tenant's \$1,175.00 security deposit in partial satisfaction of the Landlord's monetary awards.

Given the Landlord's success in this Application, I also **award the Landlord** with recovery of their **\$100.00** Application filing fee, pursuant to section 72 of the Act.

<u>Category</u>	<u>Award</u>
1. Breaking fixed-term tenancy agreement	\$2,350.00
2. Compensation for Damage dismissed	0.00
3. Concession Agreement Reimbursement	2,350.00
4. Recovery of Application filing fee	<u>100.00</u>
Sub-total	\$4,800.00
Less security deposit	<u>(1,175.00)</u>
Monetary Order	<u>\$3,625.00</u>

I authorize the Landlord to retain the Tenant's **\$1,175.00** security deposit in partial satisfaction of the monetary awards, pursuant to section 72 of the Act. Further, I grant the Landlord a **Monetary Order** of **\$3,625.00** from the Tenant pursuant to section 67 of the Act. The Tenant must be served with this Order as soon as possible.

Conclusion

The Landlord is successful in their claim for compensation against the Tenant in the amount of **\$4,800.00**, as the Landlord provided sufficient evidence to support their claims, as noted above. This amount includes recovery of the Landlord's **\$100.00** Application filing fee.

The Landlord is authorized to retain the Tenant's **\$1,175.00** security deposit in partial

satisfaction of the monetary awards. The Landlord is granted a **Monetary Order** from the Tenant of **\$3,625.00**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77 (2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1) (d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 03, 2023

Residential Tenancy Branch