



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that they sent the tenant a copy of the landlord's dispute resolution hearing package and written evidence package by registered mail on May 25, 2018. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. The landlord gave undisputed sworn testimony that Canada Post's Online Tracking System revealed that the tenant picked up these packages from Canada Post on May 28, 2019. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with these documents on May 30, 2018, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy began as a one-year fixed term tenancy with occupancy commencing on October 1, 2016. At the expiration of the initial term, the tenancy converted to a month-to-month tenancy. The landlord said that the monthly rent by the end of this tenancy was set at \$1,348.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$750.00 security deposit paid on September 9, 2016.

The landlord submitted undisputed sworn testimony and written evidence that on April 2, 2018, the tenant gave the landlord a notice to end this tenancy on April 30, 2018. The landlord gave undisputed evidence that the tenant did not surrender vacant possession of the rental unit to the tenant until 3:40 p.m., on May 1, 2018, after the time the tenant was required to surrender possession. The landlord said that the tenant did not return the key and fob to the landlord until May 11, 2018, when the tenant provided the landlord with their forwarding address in writing. The landlord testified that the new tenant who was supposed to take possession of the rental unit on May 1, 2018, could not do so, as the tenant vacated the rental unit after 1:00 p.m. on May 1, 2018, and did so without properly cleaning the rental unit to enable the new tenant to move into the rental unit.

The landlord entered into written evidence a copy of the report of the joint move-in condition inspection conducted on October 1, 2016. The landlord also provided a copy of the landlord's report of the April 30, 2018 joint move-out condition inspection, which the tenant refused to sign at the end of their inspection. The landlord also supplied many photographs of the condition of the rental unit at the end of this tenancy.

The landlord's amended claim for a monetary award of \$576.48 plus the return of the landlord's \$100.00 filing fee for this application included the following items listed on the landlord's Monetary Order Worksheet entered into written evidence by the landlord:

Item	Amount
Overholding Charge for 1 day's rent (May 1, 2018)	\$43.48
Cleaning	288.00
Painting	183.75
Painting Supplies	61.25
Recovery of Filing Fee for this Application	100.00
Total Monetary Award Requested	\$676.48

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 prove the existence of the damage/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 the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of the requested \$43.48, for the tenant's overholding of the rental unit, the equivalent to 1/31 of the rent for May 2018.

After comparing the report of the condition of the rental unit at the beginning of this tenancy with the landlord's undisputed move-out condition inspection report, as well as photographs entered into evidence by the landlord, I allow the landlord's undisputed claim for \$288.00 for cleaning of the rental unit. In this regard, I note that the landlord entered into written evidence a copy of the invoice for the cleaning costs following the end of this tenancy.

I have taken into account Residential Tenancy Branch Policy Guideline 40, which provides guidance to arbitrators regarding the Useful Life of various Building Elements for residential tenancies. In this case, the useful life of an internal paint job for a rental unit is set at four years. As the landlord testified that this rental unit was last painted when the tenant moved into the premises in September 2017, this rental unit was

painted 19 months after the most recent painting of the rental unit. Using this formula, this would normally allow the landlord to recover 29/48 or 60% of the costs associated with repainting this rental unit earlier than would have normally been scheduled.

Based on the photographs submitted by the landlord and the condition inspection reports, I accept that this rental unit experienced more than the typical amount of wear and tear during this tenancy and that the tenant should be held responsible for more than the standard 60% of the damage requiring the early repainting of this rental unit. For this reason, I allow the landlord to recover 80% of the costs associated with the repainting of the rental unit at the end of this tenancy. This results in a monetary award in the landlord's favour in the amount of \$147.00 ($\$183.75 \times 80\% = \147.00) for painting and \$49.00 ($\$61.25 \times 80\% = \49.00) for painting materials.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

I deduct the amounts of the \$627.48 award issued in the landlord's favour ($\$43.48 + \$288.00 + \$147.00 + \$49.00 + \$100.00 = \627.48) from the \$750.00 amount of the security deposit currently held by the landlord for this tenancy. This results in my order that the landlord return the remaining \$122.52 from the security deposit to the tenant.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the landlord to recover overholding rent, damage to the rental unit arising out of this tenancy and the filing fee for the landlord's application, and requires the landlord to return the remaining value of the tenant's security deposit:

Item	Amount
Overholding Charge for 1 day's rent (May 1, 2018)	\$43.48
Cleaning	288.00
Painting Award ($\$183.75 \times 80\% = \147.00)	147.00

Painting Supplies Award (\$61.25 x 80 % = \$49.00)	49.00
Less Security Deposit	\$750.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order (to be Returned to Tenant)	-\$122.52

I order the landlord to return \$122.52 from the tenant's security deposit to the tenant forthwith. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible if the landlord does not abide by the terms of this Order. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 03, 2018

Residential Tenancy Branch