



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on July 30, 2018. The Landlord applied for a monetary order for unpaid rent and damages and losses due to the tenancy, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenants by registered mail on July 31, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2017, as a one-year fixed term tenancy. Rent in the amount of \$1,275.00 was to be paid by the first day of each month and the Landlord had been given a \$640.00 security deposit and a \$200.00 pet damage deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that he had issued a 10-Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "Notice"), on July 10, 2018. The Notice indicated that the Tenants were outstanding \$1,275.00 in rent and had an effective date of January 20, 2018. The Landlord provided a copy of the Notice into documentary evidence

The Landlord testified that the Tenants moved out of the rental unit on July 20, 2018, in accordance with the Notice. The Landlord testified he and the Tenants conducted the move-out inspection on July 20, 2018; it had been noted on the inspection report that the rental unit had been left "very dirty throughout" and that the Tenants had agreed that there was \$1,275.00 worth of rent outstanding as of the date of the inspection.

Additionally, the Landlord testified that the move-out inspection noted that there were major scratches on the laundry room door and that several of the baseboards had been destroyed by the Tenants' dog. The Landlord testified that the window coverings from the living room and one of the bedrooms had been pulled from the wall and destroyed. As well, the Landlord testified that the doorknob in the "small" bedroom had been replaced with a key locking doorknob and that the Tenants had not provided him with the key when they left, so he had to replace it.

The Landlord testified that the Tenants provided their forwarding address to the Landlord during the inspection, and the Tenants signed the report indicating that they agreed that the inspection report fairly represented the condition of the rental unit at the end of the tenancy. The Landlord provided a copy of the move-out inspection into documentary evidence.

The Landlord is looking to recover, \$360.76 in repairs to the rental unit, \$109.38 for new blinds, \$54.87 to replace the doorknob on the bedroom door, and \$500.00 in cleaning costs. When asked the Landlord testified that the window coverings had been approximately six-month-old when the tenancy began and that he had completely renovated the rental unit about two years ago. The Landlord provided five invoices and two pictures into documentary evidence.

The Landlord also testified that he had been able to find a new renter to take over the rental unit and is only looking to recover the outstanding rent for July 2018, in the amount of \$1,275.00, as indicated on the Notice.

Analysis

Based on the testimony of the Landlords and the Landlord, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

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

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants received the 10-Day notice dated July 10, 2018, and did not apply to dispute the Notice or pay the outstanding rent as indicated on that Notice. I find that the Tenants were in breach of section 26 of the *Act* by not paying the rent in accordance with their tenancy agreement. Therefore, I find that the Landlord has established an entitlement to recover the unpaid rent for July 2018, in the amount of \$1,275.00.

I accept the undisputed testimony of the Landlord that the Tenants moved out in accordance with the Notice on July 20, 2018. I also accept the testimony of the Landlord that the move-out inspection report was completed the day the Tenants moved out, and that the Tenant had agreed to the report and signed that the report was a fair representation of the condition of the rental unit at the end of this tenancy.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;

- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully reviewed the move-out inspection report, and I find that the Tenants returned the rental unit to the Landlord in an uncleaned and damaged state. Section 37 of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. Therefore, I find that the Landlord has established an entitlement to recover the costs associated with cleaning the rental unit, in the amount of \$500.00.

I accept the testimony of the Landlord that the Tenants destroyed two sets of window coverings in the rental unit, and that the window coverings were only 6-month-old at the start of this tenancy. I find that these window coverings would have been less than one year old at the end of this tenancy, and if they had been cared for would have had only negligible depreciation to their useful life expectancy. Therefore, I find that the Landlord has established an entitlement to recover the full costs associated with replacing the destroyed window coverings in the living room and bedroom, I award the Landlord the recovery of the \$109.38 he spent to have the window coverings replaced.

Additionally, I find that the Tenants changed the doorknob on one of the bedrooms in the rental unit without the consent of the Landlord and that they did not provide the Landlord with the key to that doorknob when they left. I find that without the key, this new doorknob would be useless. I find that the Tenant breached section 31 of the *Act* when they changed the doorknob without the Landlord's consent. I also find that the Landlord has provided sufficient evidence to prove he took reasonable steps to minimize the cost associated with correcting Tenant's breach. Therefore, I find that the Landlord has established an entitlement to recover the full costs associated with replacing the doorknob, in the amount of \$54.87.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$1,460.01; consisting of \$1,275.00 in outstanding rent for July 2018, \$360.76 in repairs, \$109.38 in window coverings, \$54.87 to replace a doorknob, and \$500.00 in clearing cost, less the \$640.00 deposit the Landlord holds for this tenancy.

As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application

<u>Awarded Item's</u>	<u>Due</u>
Rental income	\$1,275.00
Repairs	\$360.76
Window Coverings	\$109.38
Door Knob	\$54.87
Cleaning	\$500.00
	\$2,300.01
Security Deposit	-\$640.00
Pet Damage Deposit	-\$200.00
	\$1,460.01
Filing fee	\$100.00
Due	\$1,560.01

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,560.01**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: September 21, 2018

Residential Tenancy Branch