



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for damages to the unit, site or property, to retain the tenant's security deposit and/or pet damage deposit, for unpaid rent or utilities, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") application and documentary evidence were considered. The landlord testified that the Notice of Hearing and application were served on the tenant by registered mail via two registered mail packages. The landlord testified that the first registered mail package was mailed on May 29, 2018 to the tenant at the forwarding address provided by the tenant received via a text from the tenant on May 6, 2018 and of which the landlord stated that he wrote the forwarding address from the tenant's text onto the outgoing section of the condition inspection report ("CIR") which was submitted in evidence. The registered mail tracking numbers have been included on the cover page of this decision for ease of reference and have been identified as "1" and "2". According to the online registered mail tracking website information, registered mail package 1 was not picked up by the tenant and was returned to sender as "unclaimed". According to the online registered mail tracking website information, registered mail package 2 was mailed on October 16, 2018 and was also not picked up

by the tenant and was returned to sender as “unclaimed”. Section 90 of the *Act* indicates that documents sent by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served with the two registered mail packages as of June 3, 2018 and October 21, 2018 respectively.

Given the above, the hearing continued without the tenant present and as such, I consider the landlord’s application to be unopposed by the tenant.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenant failed to provide a security deposit and pet damage deposit and as a result, the landlord requested to withdraw his request for both deposits as the tenant failed to pay either. As a result, and pursuant to section 64(3) of the *Act*, the landlord’s application was amended to remove a claim towards both deposits as I accept the landlord’s undisputed testimony that the tenant failed to pay both deposits.

The landlord also requested to reduce his monetary claim from the original amount claimed of \$11,139.00 to \$8,424.00 as some of the estimates for repairs were lower than originally expected. The landlord was advised that I find a reduction in the monetary claim against the tenant does not prejudice the tenant and as a result, the landlord was permitted to reduce his monetary claim to \$8,424.00 pursuant to section 64(3) of the *Act*.

In addition to the above, the landlord confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and tenant as the landlord provided an email address for the tenant in their application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2017 and was scheduled to end on June 30, 2018, and which required the tenant to provide vacant possession of the rental unit to the landlord.

During the tenancy monthly rent in the amount of \$1,700.00 per month and was due on the first day of each month. The landlord stated that the tenant failed to pay a security deposit or pet damage deposit.

The landlord's reduced monetary claim of \$8,424.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for May 2018	\$1,700.00
2. Unpaid rent/loss of rent for June 2018	\$1,700.00
3. Unpaid portion of April 2018 rent	\$730.00
4. Unpaid hydro bill (January to March 2018)	\$409.00
5. Repair costs 1 (other than flooring cost in 2 below)	\$3,360.00
6. Repair costs 2 (flooring)	\$525.00
TOTAL	\$8,424.00

Regarding item 1, the landlord has claimed \$1,700.00 for unpaid rent for May 2018. In support of this portion of their claim, the landlord referred to the tenancy agreement submitted in evidence which indicates that the tenant signed a fixed-term tenancy ending June 30, 2018 and that vacant possession was required by June 30, 2018 and was signed by both the tenant and the landlord. The landlord indicates that the tenant vacated the rental unit on May 10, 2018 and therefore owes May 2018 rent in the amount of \$1,700.00.

Regarding item 2, the landlord has claimed loss of June 2018 rent of \$1,700.00 due to what the landlord testified was a breach of the fixed term tenancy and the rental unit being left in a damaged and dirty condition by the tenant which prevented the landlord from being able to re-rent the rental unit for June 2018. In support of this portion of their claim the landlord referred to many colour photos submitted in evidence. The photographic evidence shows what the landlord describes as lots of garbage left behind by the tenant, a piece of flooring removed by the tenant, broken baseboards, carpets

removed from the staircase leaving exposes unfinished wood beneath, dirty windows, a chipped sink, dirty appliances, counters and cabinets, a broken floor heater, a broken door handle, damaged flooring, a dirty fan and other items which required cleaning after the tenant vacated the rental unit. The landlord also referred to the incoming and outgoing condition inspection report which supports the landlord's testimony.

Regarding item 3, the landlord has claimed \$730.00 for the unpaid portion of April 2018 rent. The landlord stated that the tenant vacated the rental unit without paying \$730.00 of rent for April 2018.

Regarding item 4, the landlord has claimed \$409.00 for the unpaid hydro utility bills for the period of January to March of 2018 as the tenancy agreement submitted in evidence indicates that the monthly rent does not include utilities.

Regarding item 5, the landlord has claimed \$3,360.00 for repair costs other than the costs for flooring which will be described in item 6 below. The landlord referred to the condition inspection report, photographic evidence and receipt which includes tax in support of all of the damages that required repair once the tenant vacated the rental unit. The invoice submitted in evidence is from a company and includes the address of the rental unit and is dated June 15, 2018. The invoice indicates that the amount includes the cost of paint and the following:

"Fixed floor, drywall, baseboard, and slid to open windows in the entire suite. Replaced wall heater, cleaned tiles with hydrogen peroxide and painted all walls in suite. Painted ceiling. Installed new doors and closet doors. Installed new sink and faucets in the washroom. Replaced the fridge, stove and wash/dryer machines. Cleaned all windows in house with hydrogen peroxide and painted trims. Cleaned fireplace. Removed garbage from suite."

[Reproduced as written]

The landlord stated that the fridge, stove, washer and dryer were all "broken" by the tenant and required replacement.

Regarding item 6, the landlord has claimed \$525.00 for the cost to replaced damaged flooring. The landlord referred to the condition inspection report and photographic evidence and an invoice dated June 16, 2018 from a flooring company which states "Install carpet on the stairs (carpet, under layer and labour)" and has a total of \$525.00 which includes tax.

Analysis

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

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find that the tenant breached section 37 of the *Act* which requires the tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the tenant failed to leave the rental unit reasonably clean and damaged the areas claimed by the landlord far beyond reasonable wear and tear.

In addition, I find the tenant breached section 26 of the *Act* which requires the tenant to pay rent on the date that it is due in accordance with the tenancy agreement. Furthermore, I find the tenant breached section 45(2) of the *Act* which states:

Tenant's notice

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.

[My emphasis added]

As a result, I find the earliest the tenant could vacate the rental unit would have been June 30, 2018 and instead the tenant vacated the rental unit on May 10, 2018 which is earlier than the agreed upon end date of the fixed-term tenancy agreement.

Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$8,424.00** as claimed. In reaching this finding I have considered the invoices, photographic evidence, condition inspection report and undisputed testimony.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$8,524.00** comprised of \$8,424.00 for items 1 to 6 inclusive, plus the \$100.00 recovery of the cost of the filing fee.

Accordingly, I grant the landlord a monetary order pursuant to section 67 of the *Act*, in the amount owing by the tenant to the landlord of **\$8,524.00**.

I caution the tenant to comply with sections 26, 37 and 45(2) of the *Act* in the future.

Conclusion

The landlord's application is fully successful.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenant to the landlord of \$8,524.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned to comply with sections 26, 37 and 45(2) of the *Act* in the future.

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: November 21, 2018

Residential Tenancy Branch