



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL

Introduction

This hearing was scheduled in response to 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*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenants confirmed that they had received the landlord's hearing package and did not provide any documentary evidence of their own. As the tenants' did not raise any issues regarding service of the hearing package, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

During the hearing the female tenant testified that the landlord provided her first name incorrectly in the landlord's application. Accordingly, I have amended the landlord's application to reflect the correct name provided by the tenant during the hearing.

Issue(s) to be Decided

Is the landlord entitled to 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*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement?

Background and Evidence

As per the testimony of the parties, the tenancy began sometime in 2014 on a month-to-month basis. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$1,000.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord could not recall whether a written inspection was conducted at move-in and testified that an inspection was conducted in the absence of the tenants at move-out. The tenants testified that neither a move-in nor move-out inspection was conducted or a copy of any such report given to them. In any event, copies did not form any part of the landlord's documentary evidence.

Sometime in June 2016, the female tenant vacated the unit. On an undisclosed date the male tenant provided written notice to the landlord that he would vacate the rental unit by August 31, 2016. The male tenant vacated the unit on September 4, 2016.

The landlord seeks compensation in the amount of \$4,315.00, including the following;

#	Item	Amount
1	Landlord Declaration	\$2,625.00
2	Unpaid Rent	\$4,300.00
3	Loss of September Rent	\$1,200.00
	Total Claim	\$8,125.00

To support his position, the landlord included a witness, a written witness statement, a hand written summary of his claim and a copy of email correspondence between the parties.

1. Landlord Declaration

It was the landlord's position that the tenants left the unit in a "deplorable state" that required many hours of labour by him and hired hands. During the hearing, the landlord testified that the item referred to above as "landlord declaration" is made up of the following;

Hours	Hourly Rate	Item	Amount
20	\$20	Pellet Stove Repair and Cleaning	\$400.00

8	\$25	Dismantling Pellet Storage Room	\$200.00
8	\$20	Dismantling Pellet Storage Room	\$160.00
8	\$15	Pressure Washing	\$120.00
8	\$20	Pressure Washing	\$160.00
40	\$20	Cleaning	\$1,600.00
		Total Landlord Declaration Claim	\$2,640.00

The landlord's witness testified that personal belongings were left behind, the unit was not cleaned, the pellet storage room contained bags of garbage, the outside deck was not cleaned, the pellet stove was dirty and the unit smelled of pet urine. The witness testified to assisting with repairs but did not provide the number of hours he assisted.

In reply, the male tenant testified that he had intended to retrieve the items left behind following the last day of the month, but before he had a chance the landlord had disposed of them. The male tenant testified that the pellet storage room did not contain bags of garbage. The male tenant testified that the pellet stove was improperly installed. He acknowledged it was dirty and broken, but contended the landlord knew it was in need of repair. The male tenant testified the unit was cleaned and in a rentable condition at the time of his vacancy.

2. Unpaid Rent

The landlord contended that the tenants' owed rent for the following months;

Item	Amount
February 2016 Rent	\$400.00
March 2016 Rent	\$400.00
April 2016 Rent	\$800.00
May 2016 Rent	\$400.00
June 2016 Rent	\$600.00
July 2016 Rent	\$500.00
August 2016 Rent	\$1,200.00

Total Unpaid Rent Claim	\$4,300.00
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The female tenant testified that she did not dispute some rent remained outstanding. The male tenant testified that he conducted work for the landlord to offset rent and it is his belief that any rent which remains outstanding did not exceed the unreturned damage deposit.

3. Loss of September Rent

The landlord testified that the unit was left damaged and because of this, the landlord was unable to immediately re-rent the unit. The landlord seeks compensation in the amount of \$1,200.00 for loss of September rent.

The male tenant reiterated that the unit was left in rentable condition and as such the tenants' should not be held liable for September rent.

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 this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

1. Landlord Declaration

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Based on the witness testimony which was congruent with the landlord's testimony and written witness statement, I find that the tenants' left the rental unit contrary to section 37(2) of the *Act*.

During the hearing the landlord provided a breakdown of labor costs; however the amount presented during the hearing is not consistent with the amount sought on the landlord's application or documentary evidence. In the absence of corroborating evidence to substantiate the amount of hours actually required to repair the damage, I find the landlord has failed to meet the second element of the above test and therefore dismiss this portion of the landlord's monetary claim, without leave to reapply.

2. Unpaid Rent

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month.

I find the landlord proved that the rent for this unit was \$1,200.00. The landlord's claim that the tenants' owed \$4,300.00 in outstanding rent was refuted by the tenants. The tenants' acknowledged some rent remained outstanding but testified the amount did not exceed the amount of the security deposit. In the absence of a clear, detailed rent ledger, I find the landlord has failed to establish his claim for outstanding rent in the amount of \$4,300.00. Based on the tenants' testimony, I find the tenants' owe rent in the amount of \$1,000.00, the total amount of the security and pet deposit.

3. Loss of September Rent

When premises cannot be immediately re-rented due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord must mitigate the loss by completing the repairs in a timely manner. Based on the testimony of the landlord and landlord's witness, I am satisfied the landlord had to have the unit repaired and cleaned before it could be re-rented. I therefore find the landlord has established his claim to recover a loss of rent for September in the amount of \$1,200.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security and pet deposit in the total amount of \$1,000.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,200.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,200.00 for the following items:

Item	Amount
Unpaid Rent	\$1,000.00
Loss of September Rent	\$1,200.00
Less Security Deposit	(\$1,000.00)
Total Monetary Award	\$1,200.00

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: January 09, 2019

Residential Tenancy Branch