



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-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 losses arising under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenants 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 gave undisputed sworn testimony and written evidence that on September 20, 2018, they sent the tenants individual copies of the landlord's dispute resolution hearing package and written and photographic evidence package by registered mail to the address the tenants supplied to the landlord at the end of this tenancy. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The landlord testified that the packages were returned by Canada Post as unclaimed. I find

that the tenants were deemed served with this package in accordance with sections 88, 89 and 90 of the Act on September 25, 2018, the fifth day after their registered mailing.

Issues(s) to be Decided

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

Background and Evidence

On September 1, 2015, the parties signed a month-to-month tenancy agreement that enabled the tenants to move into this basement suite in the landlord's home on October 10, 2015. By the end of this tenancy, the monthly rent was set at \$1,007.00, payable in advance by the first of each month. The landlord continues to hold the tenants' \$475.00 security deposit and \$250.00 pet damage deposit, both paid when the parties signed this tenancy agreement.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of October 10, 2015, and the landlord's move-out condition inspection report of September 12, 2018, conducted by the landlord and the landlord's mother after the tenants abandoned the rental unit leaving their keys inside the rental unit.

The landlord gave undisputed sworn testimony that on August 21, 2018, the tenants provided the landlord with notice that they intended to end their tenancy by September 30, 2018. When the tenants paid only \$500.00 of their September 2018 rent on September 1, 2018, the landlord issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 2, 2018.

The landlord did not enter into written evidence a copy of the requested Monetary Order Worksheet which is to accompany all monetary claims. The landlord did provide descriptions of some of the segments of their claim for a monetary award of \$2,549.00, plus the recovery of their \$100.00 filing fee from the tenants as follows:

Item	Amount
Unpaid Rent Owing from September 2018	\$507.00
Late Fee for September 2018	30.00

Carpet Cleaning	125.00
Haulage of Dresser, Shelf, Garbage and Junk Removal (1/2 Load)	452.55
Replacement of Rot Pot (Compost Bin)	35.00
Cleaning of Rental Unit	400.00
Damage to Rental Unit	1,000.00
Recovery of Filing Fee for this Application	100.00
Total of Above Items	\$2,649.55

The landlord testified that the tenants vacated the rental unit on September 12, 2018 without paying any portion of the \$507.00 in rent for that month that was identified as owing on the landlord's 10 Day Notice.

The landlord testified that the carpets required professional cleaning at the end of this tenancy. The landlord entered into written evidence a copy of the receipt for this cleaning, which was required as part of the terms of the tenancy agreement the parties signed in 2015.

The landlord provided written and photographic evidence as to the condition of the rental unit at the end of this tenancy. The landlord also testified that the landlord and their mother had to spend eight hours cleaning the rental unit at the end of this tenancy. As there were many items left behind by the tenants, the landlord had to hire a haulage firm to remove these items at a cost of \$452.55. A receipt in this amount was entered into written evidence by the landlord.

The landlord's application also noted that a "rot pot" had to be replaced at a cost of \$35.00, although the landlord provided no receipt for the replacement of this item.

The landlord's photographs and move-out condition inspection report identified many items that the landlord maintained were damaged during the course of this tenancy. The landlord testified that many of these items, including the eight year old carpet have not yet been replaced. With minor repairs to some of these items, the landlord said that the premises were re-rented to a new tenant who took possession of the rental unit in October 2018. The landlord testified that the monthly rent for this suite is now \$1,200.00, as of October 1, 2018.

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.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for the entire month of September 2018, the tenants would have needed to provide their notice to end this tenancy before August 1, 2018. As this did not occur and I find that the landlord has a valid monetary claim for unpaid rent for \$507.00 in rent that remains owing for September 2018, I allow the landlord's claim to recover this unpaid rent. Since the tenancy agreement enables the landlord to apply a late payment fee of \$30.00 for any late payments of rent, I also allow this aspect of the landlord's monetary claim.

The tenancy agreement required professional cleaning of the carpets at the end of this tenancy. The landlord has provided satisfactory evidence that this did not occur and that the landlord incurred costs of \$125.00 for this item. For these reasons, I allow the landlord's claim for compensation to recover carpet cleaning costs of \$125.00 from the tenants.

Based on the landlord's undisputed sworn testimony, written evidence in the form of a receipt and the condition inspection report, and photographic evidence, I find that the

landlord has sustained losses in the amount of \$452.55 to pay for the removal of items left behind by the tenants at the end of this tenancy. I allow the landlord's claim for these items in their entirety.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the photographic and written evidence and the landlord's undisputed sworn testimony, I find on a balance of probabilities it more likely than not that the tenants did not leave the rental unit reasonably clean. As such, I allow the landlord's claim for a monetary award for cleaning performed by the landlord and the landlord's mother at the end of this tenancy. However, I find that the landlord's estimate of eight hours of cleaning at the end of this tenancy enables the landlord to a monetary award of \$200.00, as opposed to the \$400.00 claimed by the landlord. I do so as I find that an hourly rate of \$25.00 is a better approximation of the costs that a landlord would pay for this service as opposed to the \$50.00 hourly rate that would result if the landlord's claim of \$400.00 were approved.

As the landlord has not provided a receipt for the replacement of the "rot pot", I am dismissing this portion of the landlord's monetary claim without leave to reapply.

The landlord's claim for a monetary award of \$1,000.00 has not been supported by any receipts. In fact, the landlord testified that very little of the damage claimed for has been either replaced or repaired to the extent that expenses have been incurred by the landlord. The landlord has been successful in re-renting the premises for almost 20 % more in monthly rent than the tenants were paying during their tenancy. On this basis, it is difficult to find that the landlord has incurred costs for which the landlord should be compensated. In addition, much of the repairs would appear to be associated with items such as used carpeting, which would normally have a Useful Life of 10 years according to the Residential Tenancy Branch's (the RTB's) Policy Guideline 40 or would require the repair and repainting of interior walls, which would need to be done every four years or so, according to the same Guideline. However, as the landlord noted at the hearing, there was damage caused by the tenants that the landlord may not be able to recover when the landlord eventually sells this property. Under these circumstances, I allow the landlord a monetary award of \$200.00 for the damage to items and features of this tenancy, which may not have exhausted their useful life. This relatively nominal amount takes into account that the tenants did not leave the premises undamaged at the end of their tenancy as is required by section 37(2)(a) of the *Act*.

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

I order the landlord to retain the tenants' deposits in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable on these deposits.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses, damage and the filing fee for this application, and to retain the tenant's deposits:

Item	Amount
Unpaid Rent Owing from September 2018	\$507.00
Late Fee for September 2018	30.00
Carpet Cleaning	125.00
Haulage of Dresser, Shelf, Garbage and Junk Removal (1/2 Load)	452.55
Cleaning of Rental Unit	200.00
Damage to Rental Unit	200.00
Less Security and Pet Damage Deposits	-725.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$889.55

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: January 10, 2019

Residential Tenancy Branch