



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to sections 37 and 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord's agent and the owner of the subject rental property (collectively the "landlord") attended the hearing by way of conference call. The tenant did not attend this hearing, although I waited until 1:40 P.M. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 P.M. The landlord's agent and the owner of the subject rental property attending the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on November 20, 2018, the tenant was sent by way of Registered Mail the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the landlord's evidence. The Canada Post tracking number was provided as evidence during the hearing.

The landlord testified that the tenant had provided her forwarding address, and that the dispute resolution hearing package and evidence was mailed to that address provided

by the tenant. I find that the address to which the landlord mailed the dispute resolution hearing package was the address provided by the tenant as her forwarding address for service of documents related to the tenancy.

Section 90 of the *Act* determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the dispute resolution hearing package, and accompanying evidence, on November 25, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to sections 37 and 67 of the *Act*?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the landlord, I will only refer to the evidence I find relevant in this decision. Not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that the tenancy began on February 01, 2018. The terms of the tenancy agreement were such that the tenancy was to be a fixed-term tenancy which was to end on January 31, 2019. The monthly rent was determined to be \$1,375.00, which was due on the first day of each month. The landlord stated that the tenant provided a security deposit and pet damage deposit, both in the amount of \$687.50, both of which continue to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement signed by both parties, which confirms the details provided by the landlord.

The landlord testified that the tenant provided notice on October 03, 2018 to inform the landlord that she would be ending her tenancy early and vacating the rental unit at the end of October 2018. The landlord provided that the tenant vacated the rental unit on October 31, 2018.

The landlord provided that a condition inspection was completed at the start of the tenancy, and a condition inspection report was completed and signed by both parties in accordance with the *Act*.

The landlord testified that the tenant attended the condition inspection at the end of the tenancy, but left during the course of the inspection and did not remain in attendance to complete the inspection with the landlord. The landlord stated that tenant was informed that she may choose to disagree with the details of the report as depicted by the landlord, but the tenant chose to depart, leaving the landlord to complete the condition inspection in the absence of the tenant.

The landlord has submitted an application seeking a monetary order in the amount of \$2,536.72, which is comprised of, as the landlord asserted, damage to the rental unit caused by the tenant, unpaid rent owed by the tenant, and for liquidated damages. The landlord summarized the items comprising the claim as follows:

ITEM	AMOUNT
Replacement (purchase) of cedar hedges/bushes	\$332.80
Planting of cedar bushes	\$50.00
Oil Heater	\$67.18
Painting of one wall	\$50.00
Replacement of binds	\$22.36
Replacement of light in living room	\$166.88
Installation of new light and repair to wiring	\$105.00
Unpaid rent for October 2018	\$1,375.00
Liquidated damages as per tenancy agreement	\$367.50
Total Monetary Claim	\$2,536.72

The landlord testified that the tenant removed cedar hedges without permission from the landlord. The landlord provided that the cedar hedging was along the back of the residential property and consisted of eleven cedar trees. The landlord testified that the

tenant had erected a wall of tires in place of the cedar hedges by arranging stacks of tires where the cedar bushes had once been. The landlord stated that the tenant undertook this course of action without consent from either the owner of the property or the owner's agent. The landlord provided photographs of the tire stacks as evidence.

To remediate this unauthorized action, the landlord stated that cedar trees were purchased, along with the requisite "bone meal" which is needed to sufficiently plant the trees. The cost for the purchase was \$332.80, and the landlord provided an invoice to substantiate and prove the cost.

The landlord testified that the labour to plant the replacement trees was calculated at \$25.00 per hour over the course of two hours, which totalled \$50.00. The landlord provided a copy of an email which detailed the correspondence with the individual who planted the replacement trees, to depict the agreed-upon cost to plant the trees.

The landlord provided that during the course of the tenancy, the tenant complained that the electrical baseboard heat was insufficient to heat the rental unit. The landlord arranged for a certified electrician to attend the rental unit, and it was determined that the heating system was operating adequately. The landlord stated that the tenant maintained that the heat being generated was not sufficient to heat her child's bedroom. To alleviate the tenant's concern, the landlord purchased an oil heater to place in the bedroom of the tenant's child. When the tenant vacated the rental unit, the landlord discovered that the tenant had taken the oil heater with her.

The landlord testified that the tenant was asked to return the oil heater, but that the tenant replied that she understood the heater to be a gift and did not return the heater. The landlord provided that the tenant was not authorized to take the heater with her. The landlord purchased an oil heater to replace the heater taken by the tenant without the landlord's permission. The landlord provided an invoice in the amount of \$67.18 to prove the cost of replacing the oil heater.

The landlord testified that during the condition inspection at the end of the tenancy, the landlord cited that there was damage to the walls of the rental unit. The landlord noted that one bedroom wall presented with significant damage, such that it required significant patching, sanding, and re-painting. The landlord stated that the issue with the wall was conveyed to the tenant. The landlord noted the wall on the condition inspection report. The landlord provided an invoice to demonstrate the cost of re-painting one bedroom wall at a cost of \$50.00.

The landlord testified that during the tenancy, the tenant had removed two blinds from the rental unit to replace them with her own curtains. The tenant had stored the blinds in the shed which resulted in severe damage to one blind, such that it presented with significant water damage and could not be re-used. The other blind was missing. The landlord testified that the tenant did not have permission to remove and store the blinds in this manner. The landlord provided that blinds had to be purchased to replace the damaged and missing blinds. The landlord provided an invoice which depicts that the landlord incurred a cost of \$22.36 to purchase replacement blinds.

The landlord testified that at the onset of the tenancy, the tenant asked to remove a ceiling fan, which included a light fixture, from the living room ceiling and replace it with a different light fixture. The landlord provided that he would consent to the request only if the landlord undertook all required work to do so, or if the landlord retained the services of a qualified electrician to complete the work.

The landlord provided that the tenant undertook a series of unauthorized actions, which resulted in the tenant removing the ceiling fan and altering wiring and switches to replace the fan by installing a light fixture. The landlord testified that the wiring in the wall switch, as well as wiring that extended to the attic, was altered in a manner which was not safe and did not adhere to proper building codes. The landlord provided that at no point was the tenant given permission to undertake any of the actions carried out with respect to removing the fan, removing switches, altering wiring, or installing a new light fixture.

The landlord further stated that the original ceiling fan was damaged as the tenant stored it in such a manner that resulted in water damage to the extent that it was rendered unusable. The landlord provided an invoice, in the amount of \$166.88, to depict the cost of having to purchase a new fan unit which included an attached light fixture. The landlord also provided an invoice in the amount of \$105.00 to depict the cost of having to properly remediate the wiring in the rental unit, and to install the replacement fan.

The landlord testified that the monthly rent owed for October 2018 remains unpaid. The landlord provided that they were led to believe that the tenant paid rent for October 2018 by way of the automatic withdrawal service that the parties had arranged for the payment of rent. However, the landlord stated that it was subsequently discovered later in October 2018 that the rental payment for that month was not received, as the tenant had enacted a "stop payment" for the transaction that would have led to the payment of the rent owed for October 2018. As a result, the landlord stated that the tenant failed to

pay rent for October 2018 in the amount of \$1,375.00, and the landlord seeks the recovery of the money owed for that unpaid rent as part of the monetary claim.

The landlord provided that the tenant ended the fixed-term tenancy early, and that by doing so, the tenant violated the terms of the signed tenancy agreement which provided that the tenancy was to end on January 31, 2019. The landlord referenced clause five of the tenancy agreement, which provides that if the tenant breaches the terms of the tenancy agreement by the ending the fixed-term tenancy early, the tenant will be held liable to pay to the landlord a sum of \$350.00 plus GST as liquidated damages. Therefore, in adherence to the tenancy agreement signed and endorsed by both parties, the landlord seeks liquidated damages in the amount of \$367.50.

The landlord testified that costs were incurred to find a new tenant and enter into a new tenancy. The landlord provided that the costs incurred were related to advertising the rental unit, the time and resources allocated to accepting and processing applications from prospective tenants, conducting reference checks, conducting credit checks, conducting employment reference checks, and allocating time to conduct viewings of the rental unit.

The landlord testified that they were able to enter into a new tenancy, which was set to commence on November 01, 2018.

The landlord testified that the tenant provided her forwarding address by way of an email to the landlord dated November 06, 2018, in which the tenant requested that the landlord return the security deposit and pet damage deposit to the forwarding address provided. The landlord stated that in response to the tenant's request, an application for dispute resolution was filed on November 16, 2018, within 15 days, to retain both deposits.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this application before me. I will provide the following findings and reasons when rendering this decision.

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 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 value of the loss or damage. In this case, the onus is on the landlord to prove their claim for a monetary award.

Regarding the landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the tenant fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the landlord prove the amount of, or value of, the damage or loss?
- Did the landlord act reasonably to minimize that damage or loss?

Section 37 of the *Act* provides, in part, the following:

- 37 (2)** When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The onus or burden of proof is on the party making the claim. Based on the testimony and evidence provided by the landlord, and on a balance of probabilities, I find that the landlord has demonstrated that it is more likely than not that there was damage caused by the tenant to the rental unit. Therefore, with respect to the items forming the landlord's claim for compensation arising from damage, I find that the tenant failed to comply with section 37 of the *Act*, and the landlord's loss resulted from this non-compliance.

I also find that the landlord acted reasonably to minimize the damage or loss. The landlord undertook immediate action to repair and remediate the damage caused by the tenant within a reasonable timeframe and did so by incurring costs that were not unduly high.

The final component of the four-part test referenced above is the requirement for the claimant to prove the amount of, or value of, the damage or loss. I find that the landlord has provided sufficient evidence, in the form of copies of invoices and an itemized list of items and the associated cost to replace those items, to prove the amount of the loss.

I further find that for each item sought, the landlord has provided detailed testimony and evidentiary material in the form of invoices, a condition inspection report, and photographs), to prove the amount of, and value of, the damage or loss, and the costs associated with repairing and remediating the damage to the rental unit caused by the tenant. I find that the landlord's testimony details the actions undertaken by the landlord to repair and remediate the damage caused by the tenant, and that the cost for each item was reasonable and not unduly high or unrealistic.

Based on the foregoing, I find that the landlord has met the burden of proving its claim and providing testimony and evidence to satisfy the four-part test referenced above for each item comprising its claim for damage to the rental unit. Therefore, I find that the landlord is entitled to a monetary award of \$794.22 for damage caused by the tenant, to the rental unit, site or property.

Subsection 26(1) of the *Act* sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the uncontested testimony provided by the landlord, which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the *Act* or by mutual agreement between the parties.

As per section 26 of the *Act*, and in accordance with the tenancy agreement between the parties, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed testimony and evidence demonstrating that the tenant did not provide full payment of rent owed in the amount of \$1,375.00 for the month of October 2018, thereby resulting in rental arrears as set out above.

I accept the uncontested evidence provided by the landlord with respect to the tenant's failure to pay the total rental arrears owed for the month of October 2018. Therefore, I find that the landlord is entitled to a Monetary Order of \$1,375.00 for unpaid rent.

I also grant the landlord its claim for liquidated damages in the amount of \$367.50. The landlord provided that the tenant ended the fixed-term tenancy early, and that by doing so, the tenant violated the terms of the signed tenancy agreement which provided that the tenancy was to end on January 31, 2019. The landlord referenced clause five of the tenancy agreement, which provides that if the tenant breaches the terms of the tenancy agreement by the ending the fixed-term tenancy early, the tenant will be held liable to pay to the landlord a sum of \$350.00 plus GST as liquidated damages.

Therefore, the landlord has proven that the tenant breached the terms of the tenancy agreement and failed to adhere to the terms of the tenancy agreement signed and endorsed by both parties. As a result, the landlord is awarded liquidated damages in the amount of \$367.50.

I find that the landlord is entitled to retain the security deposit and pet damage deposit in partial satisfaction of the monetary order which the tenant will be ordered to pay to the landlord. Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit and pet damage deposit. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant a monetary Order in the landlord's favour, in the amount of \$1,261.72, under the following terms, calculated as follows:

ITEM	AMOUNT
Replacement (purchase) of cedar hedges/bushes	\$332.80
Planting of cedar bushes	\$50.00
Oil Heater	\$67.18
Painting of one wall	\$50.00
Replacement of binds	\$22.36
Replacement of light in living room	\$166.88

Installation of new light and repair to wiring	\$105.00
Unpaid Rent owed for October 2018	\$1,375.00
Liquidated damages awarded to landlord	\$367.50
Recovery of filing fee for this application	\$100.00
Less security deposit permitted to be kept	\$687.50
Less pet damage deposit permitted to be kept	\$687.50
Total Monetary Award to Landlord	\$1,261.72

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order 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 29, 2019

Residential Tenancy Branch