



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL MNRL-S**

Introduction

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

- An order for compensation for damage caused by the tenant, their pets or guests to the unit pursuant to section 67;
- A monetary order for unpaid rent pursuant to section 67; and
- An order authorizing the landlord to retain the security deposit pursuant to section 38.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the landlord, not all details of the landlord's submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package by registered mail on December 14, 2018. The landlord read out the Canada Post tracking number to me. Based on the landlord's oral testimony, I find the tenant is deemed served with the Application for Dispute Resolution hearing package on December 19, 2018, five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and unpaid rent?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord provided undisputed testimony, as follows. The rental unit is the basement suite of a newer house, built in 2016. The tenancy agreement indicates the tenancy began as a month to month tenancy on September 17, 2018 with monthly rent set at \$1,900.00, payable on the first day of each month. The landlord lowered the rent to \$1,800.00 on November 1, 2018 because laundry facilities were no longer being offered with the suite. At the commencement of the tenancy, a security deposit of \$950.00 was given to the landlord which he still holds. No condition inspection report was done when the tenant moved in.

On November 15, 2018, the parties participated in a dispute resolution proceeding before an arbitrator with the Residential Tenancy Branch. The parties settled their dispute by awarding the landlord an order of possession effective December 1, 2018.

The tenant moved out of the rental unit on December 1, 2018. A move-out condition inspection report was not completed, and the tenant did not give the landlord a written notice of forwarding address. The landlord maintains that when the tenant moved out, October and November rent totalling \$2,700.00 remained outstanding. The landlord claims the tenant damaged the bottom molding on a door frame and walls in the unit at the end of the tenancy and provided video evidence and photographs to substantiate his claim. The photographs and videos showed the rental unit had an excessive number of nail holes and wall damage done to the suite during this tenancy that lasted only three months. The landlord provided one invoice for painting supplies in the amount of \$52.65 and testified that he paid a further \$220.62 in supplies to repaint the rental unit at the end of the tenancy. The unit was also left in an unclean and unsanitary condition. Invoices from a flooring supplier, a paint supplier, and a professional cleaning service were provided as evidence.

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. To claim 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 or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by other party. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a 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.

Paint

I accept the landlord's testimony and documentary evidence regarding damaged walls. I am satisfied that the tenant caused the damage to the walls requiring painting and I award the landlord \$273.27.

Cleaning

Residential Tenancy Branch Policy Guideline PG-1 states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The landlord provided video and photographic evidence to show the condition of the unit at the end of the tenancy did not meet the standard. The invoice from the professional cleaning company hired by the landlord to bring it back to this standard is a cost that should be borne by the tenant, and I award the landlord \$252.00.

Junk Removal

The landlord claimed that he had to remove the tenant's trash at the end of the tenancy. He removed the material himself and did not need to hire a junk removal company or a special waste container. I decline to award the landlord compensation for the junk removal.

Unpaid Rent

Section 26(1) of the *Act* says 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. In the absence of any evidence to the contrary, I accept the landlord's testimony that the tenant was required to pay, and failed to pay \$1,900.00 October and \$1,800.00 November rent. I award the landlord \$2,700.00.

Security Deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Residential Tenancy Branch Policy Guideline PG-17 says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*;

In this case, the tenant's security deposit of \$950.00 is doubled to \$1,900.00.

The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord may deduct \$1,900.00 in partial satisfaction of the monetary order.

Item	Amount
Paint	\$273.27
Cleaning	\$252.00
Unpaid Rent for October 2018	\$1,900.00
Unpaid Rent for November 2018	\$1,800.00
Less security deposit held	(\$1,900.00)
Total monetary award	\$2,325.37

Conclusion

I find the landlord is entitled to monetary compensation from the tenant pursuant to section 67 in the amount of \$2,325.37.

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: February 1, 2019

Residential Tenancy Branch