



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNRL-S, MNDCL, FFL

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 damage to the rental unit pursuant to section 67;
- a monetary order for loss of rent and utilities pursuant to section 67;
- 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 damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that she personally served the tenants' with the landlord's application for dispute resolution hearing package ("Application"), on June 25, 2018. In accordance with section 89 of the *Act*, I find that the tenants were served with the Application on June 25, 2018. The landlord testified that she personally served each tenant a subsequent evidence package on February 1, 2019. In accordance with section 88 of the *Act*, I find that each tenant was served with the subsequent evidence package on February 1, 2019.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for loss of rent and utilities?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to a monetary order for damage or compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the landlord, the tenancy began on October 13, 2017 on fixed term until April 13, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$3,750.00 plus water utilities was payable on the fifteenth of each month. The tenants remitted a security and pet deposit in the total amount of \$3,750.00 at the start of the tenancy, which the landlord still retains in trust.

On June 18, 2018, after numerous attempts to contact the tenants, the male tenant replied and advised the landlord that he had vacated the unit a month prior; he was uncertain whether his wife, the female tenant was still living in the unit. On June 24, 2018 the landlord successfully contacted the female tenant who advised the landlord that she had vacated the unit prior to her husband.

The landlord testified that the unit was left severely damaged. She seeks compensation in the amount of \$15,804.18, including the following;

#	Item	Amount
1	Junk Removal	\$1,233.75
2	Cleaning	\$989.63
3	Pressure Washing	\$367.50
4	Insurance Deductible	\$500.00
5	Water Utilities	\$283.33
6	Increase of Insurance	\$300.00
7	New Door	\$640.00
8	Handrail	\$490.00
9	Hardwood Floor	\$7,150.00
10	Loss of Rent (No Notice)	\$3,750.00
12	Filing Fee	\$100.00
	Total Claim	\$15,804.18

To support her position, the landlord has provided photographs, text messages, water utility bills and invoices.

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 37 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. 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.

Based on the undisputed testimony of the landlord, the photographs and the invoices before me, I find that the tenants left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find that the landlord is entitled to compensation in the amount of \$3,374.21 for junk removal, cleaning, pressure washing, insurance deductible and water utilities (\$1,233.75 + \$989.63 + \$367.50 + \$500.00 + \$283.33).

In the absence of documentary evidence in the form of invoices I find the landlord has failed to substantiate the actual amount required to compensate for the increase in insurance, new door, handrail and hardwood floor. For this reason, I dismiss these portions of the landlord's monetary claim without leave to reapply.

Under section 45 of the *Act*, a tenant may end a periodic tenancy by giving the landlord notice on a date that is the day before the day in the month that rent is payable under the tenancy agreement. I find the tenants ended the tenancy contrary to the *Act* when they failed to provide sufficient notice. For this reason I award the landlord \$3,750.00 in compensation for loss of rental income.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$3,750.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,374.21. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,474.21.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,474.21 for the following items:

Item	Amount
Junk Removal	\$1,233.75
Cleaning	\$989.63
Pressure Washing	\$367.50
Insurance Deductible	\$500.00
Water Utilities	\$283.33
Loss of Rent (No Notice)	\$3,750.00
Less Security Deposit	(\$3,750.00)
Filing Fee	\$100.00
Total Claim	\$3,474.21

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 25, 2019

Residential Tenancy Branch