



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-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 and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:15 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. Landlords W.B., L.K. and E.K. (herein referred to as "the landlord") attended the hearing and were 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding and their evidence for this hearing. The landlord testified that they hired a process server to effect service in person on the tenant. The landlord submitted into documentary evidence a sworn affidavit from the process server confirming that the tenant was served in person on November 6, 2018 at approximately 4:10 p.m. with the landlord's Notice of Dispute

Resolution Proceeding package, including the landlord's Application for Dispute Resolution and evidentiary materials.

As such, I find that the tenant was served the documents for this hearing on November 6, 2018 in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, confirming that this month-to-month tenancy began February 1, 2002.

The rental unit consists of a four-bedroom duplex approximately 2,000 square feet in size. Monthly rent, payable on the first of the month, was \$860.00 until the landlord increased it to \$895.00 as of March 1, 2018. I explained to the landlord during the hearing that in 2018, the allowable rent increase was limited to 4%, which would have permitted a rent increase of only \$34.40, resulting in a new monthly rent of \$894.40. In this case, the landlord "rounded up" the rent increase to \$895.00, which is not permissible under the *Act*. As such, in accordance with section 43(5) of the *Act*, I find that the tenant was not required to pay the additional increase in rent of \$35.00 as the rent increase was not in accordance with the *Act*. Therefore, I advised the landlord I would only consider the landlord's claim against the tenant for unpaid rent in the amount of \$860.00 for the month of March 2018.

The tenant paid a security deposit of \$400.00, which continues to be held by the landlord.

The tenant ended the tenancy and vacated the rental property on March 31, 2018. The landlord testified that the tenant never provided his forwarding address.

The landlord claimed that the tenant did not pay rent for February and March 2018, for a total of \$1,720.00 in rental arrears owing to the landlord.

The landlord testified that the tenant failed to clean the rental unit, damaged the carpet and front door, and left behind furniture and property. This resulted in the landlord incurring cleaning, disposal, and repair costs for which the landlord is seeking compensation. The landlord submitted photographic evidence of the condition of the rental unit at move-out and invoices in support of his testimony.

The landlord also claimed for the cost of a process server used to serve the tenant with the Notice of Dispute Resolution Proceeding package for this hearing. While provisions regarding disbursement costs such as registered mailing costs, service of documents costs, printing and travel expenses are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. Therefore, the landlord's claim for the cost of a process server is not allowable under the *Act* and is been dismissed.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show 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 the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for rental arrears and damages. I have addressed my findings on each of these heads of claim.

1) Rental Arrears

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenant to pay \$860.00 in monthly rent. As such, based on the

testimony and evidence before me, on a balance of probabilities, I accept the sworn testimony of the landlord that the tenant failed to pay rent for the months of February and March 2018.

Therefore, I find the landlord is entitled to a monetary award of \$1,720.00 for rental arrears owed by the tenant.

2) Damages

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 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,...

Based on the evidence submitted by the landlord in support of their claim, I find that there is sufficient evidence that the tenant caused damage beyond reasonable wear and tear and failed to leave the rental unit reasonably clean. Therefore, I find that the claimant has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party.

In the following sections, I address each claim on the basis of whether the claimant has provided sufficient evidence of the monetary amount of the damage or loss, and where applicable, if the loss was mitigated sufficiently.

Cleaning and Disposal Costs

The landlord submitted photographic evidence, an invoice for professional cleaning in the amount of \$220.50, and an invoice for garbage disposal costs of \$65.25 in support of their testimony regarding the professional cleaning and disposal costs caused by the tenant at the end of the tenancy. The landlord also claimed another \$410.00 for additional labour costs for cleaning, garbage disposal and repairs performed by the landlord. The landlord submitted a summary setting out the hours of labour for each task, charged at a rate of \$25.00 per hour. As the landlord has submitted sufficient evidence of the amount of the monetary losses incurred due to the tenant's contravention of the *Act*, I find that based on the testimony and evidence before me, on a balance of probabilities, the landlord is entitled to the claims for professional cleaning, garbage disposal, and labour costs noted above.

Replacement of Building Elements

The landlord submitted photographic evidence and invoices for the building elements which required replacement due to damage. As such, I find that the landlord has provided sufficient evidence of the monetary loss incurred for the damage to the building elements of the rental unit.

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

As the landlord estimated that the carpet could be up to 22 years old and the door could be up to 10 years old, I have used these estimates of the age of the building elements to allocate the following percentages in calculating the replacement cost attributable to the tenant's damage, based on Policy Guideline 40. If a building element is beyond its useful life, which is the case pertaining to the carpet, no compensation is allowable.

Item	Useful Life	Amount Claimed	Percentage Attributable	Amount Awarded
Carpet	10 years	\$400.00	0%	0
Door	20 years	\$169.96	50%	\$84.98
Total Monetary Award to Landlord for Replacement Claim				<u>= \$84.98</u>

A summary of compensation allocated for the landlord's compensation and damages claim is provided as follows:

Item	Amount
Unpaid rent for February and March 2018 (\$860.00 x 2)	1,720.00
Professional cleaning invoice	\$220.50
Garbage dumping invoice	\$65.25
Landlord's labour costs for cleaning, disposal and repairs	\$410.00
Repair/replacement of building elements	\$84.98

Total Monetary Award to Landlord for Damages Claim	\$2,500.73
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Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$2,500.73.

The landlord continues to retain the tenant's \$400.00 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$2,500.73, against the tenant's \$400.00 security deposit held by the landlord in partial satisfaction of the total monetary award.

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

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$2,200.73.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$2,500.73
Recovery of the filing fee from the tenant	\$100.00
LESS: Security deposit held by landlord	(\$400.00)
Total Monetary Order in Favour of Landlord	\$2,200.73

Conclusion

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$2,200.73 in satisfaction of my finding that the landlord is entitled to a monetary award for damages flowing from the tenancy, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: March 18, 2019

Residential Tenancy Branch