



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL**

Introduction

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

- 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 unpaid rent and for damage to the unit in the amount of \$4,113.75 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. 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. 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.

The landlord testified that she served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on October 24, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. She testified that she sent it to the tenant's mother's house, as the tenant's mother told her that the tenant was now living there. I find that the tenant is deemed served with this package on October 29, 2019, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$4,113.75;
- 2) retain the security deposit; and
- 3) recover her filing fee from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting January 1, 2019. Monthly rent was \$1,400 and was due on the first of the month. The tenant paid the landlord a security deposit of \$700. The landlord still retains this deposit.

The landlord testified that the tenant did not pay any rent for July or August 2019. She testified that on July 15, 2019, the tenant told her that he would be ending the tenancy on August 1, 2019.

The landlord testified that the tenant had not vacated the rental unit by August 1, 2019. She testified that many of his possessions were still in the rental unit after that date and that a moving trailer he borrowed from his work was parked in the driveway of the rental unit. She contacted the tenant's work, who removed the trailer in mid-August. She testified that this prevented her from bringing a truck up to the rental unit to remove the tenant's possessions (and garbage) which the tenant failed to remove.

The landlord testified that the tenant had entirely failed to clean the rental unit at the end of the tenancy. She submitted several photos of the rental unit showing an extremely dirty refrigerator, a dirty bathroom floor and toilet base splattered with what appears to be feces, paint splashed on the walls, and mirror panels stuck to the walls and ceiling.

The landlord submitted a copy of a move-out condition inspection report which listed the kitchen, main bathroom, bedrooms, and exterior all as dirty or damaged. She testified that the tenant was not present at the move-out inspection, despite her requesting him to attend several times.

The landlord testified that she did not conduct a move-in inspection at the start of the tenancy but testified that the rental unit was in fair to good condition. She testified that

she filled out the condition of the rental unit at the start of the tenancy from memory when she made the move-out condition inspection report.

The landlord testified that she and an employee of hers spent 35 hours cleaning the rental unit. She testified that she spent a further 18 hours repairing the damaged walls and ceiling and repainting the walls. She claims compensation for this work at a rate of \$25 per hour. She testified that she purchased \$75 of painting supplies to repaint the rental unit. She testified she hired a carpet cleaning company to clean the carpets in the rental unit at a cost of \$183.75.

The landlord also testified that the tenant left a significant amount of garbage in the basement of the rental unit, which took three hours to haul away.

The landlord testified that the tenant did not return the keys to the rental unit, despite her asking several times. She testified she had to have the locks replaced and keys recut at a cost of \$200.

The landlord additionally hired a company to mow the overgrown yard at a cost of \$55. The tenancy agreement requires the tenant to “keep the premises (including the grounds) clean, free from refuse, well maintained (grass mowed and snow plowed) and in good repair.”

The landlord also alleged that, during the tenancy, the tenant installed a security system in the rental unit, which was falsely triggered twice. She testified that she received three invoices from the city (as the registered property owner) totaling \$215.

In total, the landlord claims \$4,228.75, representing the following

July and August Rent	\$2,800.00
Carpet cleaning	\$183.75
Cleaning unit (35 hours @ \$25/hour)	\$875.00
Repairs and repainting (18 hours @ \$25/hour)	\$450.00
Painting Supplies	\$75.00
Garbage removal (3 hours @ \$25/hour)	\$75.00
Replace locks/keys	\$200.00
Yard maintenance	\$55.00
False alarm charges	\$215.00
Security Deposit credit	-\$700.00
Total	\$4,228.75

Analysis

I accept the landlord's uncontroverted testimony in its entirety. I found her responses to my questions to be considered and candid. She did not attempt to hide the fact that she did not conduct a move-in inspection report at the start of the tenancy, but rather admitted that she was unaware she was required to do so, and now (in light of the damage caused by the tenant) has made it her practice do so.

1. Unpaid Rent

Based on the landlord's testimony I find that the tenant did not pay rent for the month of July or August 2019.

I find that the tenant gave notice to end the tenancy on July 15, 2019. Section 45 of the Act permits a tenant to end a tenancy by giving at least one month's notice to end the tenancy on the day before the rent is due. As monthly rent was due on the first of the month, the tenant is only permitted to end the tenancy on the last day of the month.

Section 53 of the Act automatically corrects an incorrect effective date of a notice to end tenancy to the earliest permitted date under the Act. In this case, the earliest date the tenant could have ended the tenancy on by giving notice on July 15, 2019 would be August 31, 2019.

As such, I find that the tenant was obligated to pay rent for July and August 2019, and that he failed to do so. Accordingly, I order that the tenant pay the landlord this outstanding rent.

2. False Alarm Charges

The landlord did not include a claim for compensation for these charges in her application for dispute resolution. Accordingly, the tenant could not have been aware that the landlord was seeking compensation for these charges in advance of this hearing.

Rule of Procedure 4.1 permits an applicant to amend their application to add an additional claim before a hearing. The landlord did not do this. Accordingly, I have no authority to award the landlord compensation for incurring these charges and decline to do so.

3. Cleaning and Damage

Based on the landlord's testimony and documentary evidence, I find that the rental unit was in the condition as described on the move-out condition inspection report. Although no inspection report was done at the start of the tenancy, I accept the landlord's testimony that the rental unit was in fair to good condition.

I find that the condition of the rental unit at the end of the tenancy was such that significant cleaning, repairs, and repainting were required.

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

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, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the tenant failed to comply with this section.

I accept that the repairs, repainting, and cleaning done by the landlord, or companies hired by the landlord, were reasonable and necessary to bring the rental unit back to a rentable state.

I accept the landlord's testimony that the tenant did not return the keys at the end of the tenancy. I find that it was reasonable therefore to replace the rental unit locks and have new keys cut. I find the cost claimed to be reasonable.

In summary, I find that the landlord reasonably incurred \$1,913.75 in expenses associated with cleaning, repairing, and repainting the rental unit necessitated by the tenant's breach of section 37(2) of the Act, representing the following:

Carpet Cleaning	\$183.75
Cleaning Unit (35 hours @ \$25/hour)	\$875.00
Repairs and repainting (18 hours @ \$25/hour)	\$450.00
Painting Supplies	\$75.00
Garbage removal (3 hours @ \$25/hour)	\$75.00

Replace locks/keys	\$200.00
Yard maintenance	\$55.00
Total	\$1,913.75

I order that the tenant pay the landlord this amount.

4. Security Deposit

The landlord testified that she did not complete a move-in condition inspection report.

The completion of a condition inspection report at the start of the tenancy is required by section 23(4) of the Act, which states:

Condition inspection: start of tenancy or new pet

23(4) The landlord must complete a condition inspection report in accordance with the regulations.

The consequences for the failure to complete one is set out at sections 24(2) of the Act:

Consequences for tenant and landlord if report requirements not met

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

[...]

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with sections 24(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at the start of the tenancy.

The effect of this extinguishment is set out at Residential Tenancy Policy Guideline 17:

C3. 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;
[...]
- whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the security deposit. As the landlord's right to claim against the security deposit is extinguished, the tenant is entitled to receive double the amount of the security deposit from the landlord.

Accordingly, I order that the landlord pay the tenant \$1,400. Pursuant to section 72(2) of the Act, this amount will be offset any amount I order the tenant to pay the landlord.

As the landlord has been substantially successful in her application, per section 72(1) of the Act, she may recover her filing fee from the tenant.

Conclusion

I order that the tenant pay the landlord \$3,413.75, representing the following:

July and August Rent	\$2,800.00
Carpet Cleaning	\$183.75
Cleaning Unit (35 hours @ \$25/hour)	\$875.00
Repairs and repainting (18 hours @ \$25/hour)	\$450.00
Painting Supplies	\$75.00
Garbage removal	\$75.00
Replace locks/keys	\$200.00
Yard maintenance	\$55.00
Filing Fee	\$100.00
Double security deposit credit	-\$1,400.00
Total	\$3,413.75

The landlord must serve the tenant with a copy of this decision and attached monetary order in accordance with the Act.

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 06, 2020

Residential Tenancy Branch