



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, OPC, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution filed by the Landlord November 22, 2019 (the “Application”). The Landlord sought an Order of Possession based on a One Month Notice to End Tenancy for Cause dated October 30, 2019, compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

This matter came before me January 21, 2020 and an Interim Decision was issued January 21, 2020. This decision should be read with the Interim Decision. The request for an Order of Possession was withdrawn at the initial hearing.

The Landlord and Witness appeared at the adjourned hearing. The Tenant did not appear at either hearing. I explained the hearing process to the Landlord and Witness. The Landlord and Witness provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the first package was sent to the Tenant by registered mail. The Landlord testified that this package included the hearing package and some evidence. The Landlord submitted evidence with Tracking Number 1 on it in relation to this package. The Landlord submitted a delivery confirmation showing the package was delivered and signed for by the Tenant December 16, 2019. The Landlord testified that he had sent the package to the rental unit and Canada Post forwarded it to the Tenant’s new address.

The Landlord testified that the second package of evidence was sent to the Tenant at the rental unit by registered mail. The Landlord provided Tracking Number 2. I looked this up on the Canada Post website which shows the package was delivered and signed for by another tenant of the rental unit address on January 08, 2020.

Based on the undisputed testimony of the Landlord and delivery confirmation, I am satisfied pursuant to section 71(2) of the *Residential Tenancy Act* (the “Act”) that the Tenant was sufficiently served with the hearing package and first package of evidence. Based on the delivery confirmation, I am satisfied the Tenant received the package December 16, 2019. I am satisfied the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

I am not satisfied the second evidence package was sufficiently served. The Landlord testified at the initial hearing that the Tenant vacated the rental unit November 30, 2019. The second package was sent to the rental unit and delivered and signed for by another tenant of the rental unit address on January 08, 2020. The second package was not served in accordance with section 88 of the *Act*. I am not satisfied the Tenant received the second package.

Rule 3.5 of the Rules of Procedure (the “Rules”) states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Pursuant to rule 3.14 of the Rules, the Landlord’s evidence had to be served on the Tenant.

I am not satisfied the Tenant was served with the second package of evidence in accordance with the *Act* and Rules. Therefore, I exclude the second package of evidence as I find it would be unfair to consider evidence not properly served on the Tenant.

As I was satisfied of service of the hearing package and first package of evidence, I proceeded with the hearing in the absence of the Tenant. The Landlord and Witness were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence

pointed to during the hearing. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted two Monetary Order Worksheets, one for \$12,220.75 and one for \$6,248.73. The Landlord confirmed he was relying on the Monetary Order Worksheet for \$6,248.73.

The Landlord sought the following compensation:

Item	Description	Amount
1	Loss of rent for October	\$2,730.00
2	Patch, prime and paint 60 holes	\$2,310.00
3	Cleaning	\$100.00
4	Toilet, tub drain and faucet	\$509.25
5	Door knobs, bath fan, moths	\$347.69
6	Replace toilet	\$297.09
7	Towel holder and duct for fan	\$90.53
8	Garbage	\$364.17
	TOTAL	\$6,748.73

The Monetary Order Worksheet shows \$6,248.73 because the Landlord deducted \$500.00 for the security deposit.

A written tenancy agreement was submitted as evidence. The tenancy started February 15, 2017 and was for a fixed term of one year. It then became a month-to-month tenancy. Rent at the start of the tenancy was \$1,000.00 due on the first day of each month. The Tenant paid a \$500.00 security deposit. The agreement is signed by the Landlord and Tenant.

The Landlord testified that the Tenant vacated the rental unit November 30, 2019.

The Landlord testified that the Tenant never provided a forwarding address.

The Landlord confirmed the Condition Inspection Report (CIR) in evidence is correct. It shows the parties did a move-in inspection and signed the CIR February 15, 2017.

The Landlord testified that the Tenant did not participate in the move-out inspection. The Landlord testified that he provided the Tenant a final opportunity to do the move-out inspection on the RTB form which was posted to the door of the rental unit December 02, 2019.

The Landlord provided the following testimony in relation to the compensation sought.

Loss of rent for October

The Landlord testified as follows. The upstairs tenants at the rental unit address were terrorized by the Tenant. The police attended over this. The upstairs tenants got to a point where they had had enough and sent a letter stating they were leaving because of the Tenant. He let them move out.

The Landlord further testified as follows. The upstairs tenants gave notice on August 22 ending their tenancy for September 30. He tried to re-rent the unit as soon as possible. He did re-rent the upper suite for October but at pro-rated rent of \$1,170.00.

The Landlord submitted a spreadsheet outlining issues with the Tenant that date back to 2017 including concerning issues starting in February of 2019. The One Month Notice submitted is dated October 30, 2019 and is based on the Tenant significantly interfering or unreasonably disturbing other occupants or the Landlord and causing extraordinary damage. The Landlord did not point to evidence showing he attempted to end this tenancy prior to the One Month Notice dated October 30, 2019.

Patch, prime and paint 60 holes

The Landlord testified as follows. There were 64 holes in the walls of the rental unit at the end of the tenancy. The Tenant had not fixed any of the holes shown in the video taken during the tenancy.

The Landlord relied on a video and photos in evidence. The Landlord relied on an estimate for the cost of repairs dated November 17, 2019 from E.T.

Cleaning

The Landlord testified as follows. The rental unit was a complete mess at the end of the tenancy. There were moths all over the place. He did a lot of the cleaning. A cleaning person attended and cleaned for five hours for \$100.00.

The Landlord relied on photos in evidence.

Toilet, tub drain and faucet

The Landlord testified as follows. The toilet was leaking and damaged at the end of the tenancy. The tub drain had been ripped off. The faucet was bent out of shape.

The Landlord testified about an invoice from a plumber for repairing the above issues. He testified that it cost \$509.25 to fix the toilet, install a bath tub drain kit and adjust the shower faucet. The Landlord testified that this cost included labour and materials.

The Landlord relied on photos, the video and CIR in evidence.

Door knobs, bath fan, moths

The Landlord testified as follows. The bathroom fan was broken at the end of the tenancy and had to be replaced. He had to purchase materials to address issues in the rental unit including caulking for the bathroom fan, a door knob and moth repellent. These materials cost \$347.69.

The Landlord relied on the video in evidence.

Replace toilet

The Landlord testified that he had to purchase a new toilet for the rental unit which cost \$227.39.

Towel holder and duct for fan

The Landlord testified as follows. The towel holder in the bathroom had been ripped off. He had to purchase a new one. He had to purchase duct work for the bathroom fan. These items cost \$90.53.

The Landlord relied on the CIR in evidence.

Garbage

The Landlord testified as follows. The Tenant left furniture and clothes in the rental unit. The Tenant had damaged items in the rental unit that had to be removed such as kitchen cabinet doors. He had the items left behind and damaged items removed which cost \$364.13.

The Landlord relied on photos, the video and CIR in evidence.

Witness

The Witness testified as follows. He attended the rental unit three times. He attended October 30 and took a video of the rental unit. He attended November 12 in relation to a letter to the Tenant about repairs. He attended December 02 for the move-out inspection during which the Landlord took photos. The rental unit was in the same state at the end of tenancy as shown in the video taken during the tenancy.

Evidence

The video in evidence shows extensive damage to the walls and ceiling of the rental unit including numerous holes and large holes. It also shows a broken door knob, broken bathroom fan and broken kitchen cabinet doors.

The photos show broken kitchen cabinet doors, moths, items left behind in the rental unit, that the rental unit was dirty at the end of the tenancy, the wall damage and a door that is cracked with a broken knob.

Analysis

Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Landlord and CIR, I am satisfied the Tenant participated in the move-in inspection and therefore did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied the Tenant was properly served with a final notice to do the move-out inspection as this was posted to the door of the rental unit after the Tenant had already vacated. Given this, I am not satisfied the Tenant extinguished his rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for loss of rent.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant never provided a forwarding address. Further, the Landlord applied to keep the security deposit prior to the end of the tenancy. In the circumstances, I find section 38(1) of the *Act* has not been triggered and the Landlord has complied with section 38(1) of the *Act* by claiming against the security deposit prior to the end of the tenancy and prior to receiving the Tenant's forwarding address.

Compensation

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* outlines a tenant's obligations upon vacating a rental unit and states:

(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...

Loss of rent for October

I am not satisfied the Landlord is entitled to compensation for loss of rent in relation to the upstairs tenants ending their tenancy due to the Tenant. The Landlord submitted evidence showing issues with the Tenant dating back to 2017. The evidence shows concerning issues with the Tenant in 2018 and in February of 2019. The Landlord said the upstairs tenants gave notice in August. The One Month Notice is dated in October. I am not satisfied the Landlord mitigated the loss claimed as the evidence suggests that the Landlord should have taken steps to end this tenancy prior to October if he was concerned about losing other tenants in the building.

Patch, prime and paint 60 holes

I am satisfied based on the undisputed testimony of the Landlord, video, photos and undisputed testimony of the Witness that the Tenant caused extensive damage to the walls and ceiling of the rental unit. I am satisfied based on the same evidence that there were numerous holes and large holes in the walls. I am satisfied based on the same evidence that the damage is well beyond reasonable wear and tear. I am satisfied the Tenant breached section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Landlord, video, photos and undisputed testimony of the Witness that the Landlord had to repair the wall and ceiling damage at the end of the tenancy.

I am satisfied based on the undisputed testimony of the Landlord and estimate from E.T. that repairing the damage cost \$2,310.00. I find this amount reasonable given the extent of the damage as shown in the video and photos. I award the Landlord this amount.

Cleaning

I am satisfied based on the undisputed testimony of the Landlord and photos that the rental unit was dirty at the end of the tenancy. I am satisfied based on this same evidence that the Tenant breached section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Landlord and photos that the Landlord had to clean the rental unit and hire someone to assist with cleaning.

I am satisfied based on the undisputed testimony of the Landlord that he hired a cleaner who attended and cleaned for five hours at a cost of \$100.00. I find this amount to be more than reasonable given the state of the rental unit as shown in the photos. I award the Landlord this amount.

Toilet, tub drain and faucet

I am satisfied based on the undisputed testimony of the Landlord and CIR that the Tenant broke the toilet. I am satisfied based on the undisputed testimony of the Landlord that the tub drain had been ripped off and the faucet was bent out of shape. I am satisfied based on the undisputed testimony of the Landlord that the Tenant breached section 37 of the *Act* in relation to these issues.

I am satisfied based on the undisputed testimony of the Landlord that the Landlord had to fix the toilet, tub drain and faucet. I am satisfied based on the undisputed testimony of the Landlord that doing so required a plumber and cost \$509.25. I find this amount reasonable. I award the Landlord this amount.

Door knobs, bath fan, moths

I am satisfied based on the undisputed testimony of the Landlord and video that the bathroom fan was broken at the end of the tenancy. I am satisfied based on the video and photos that a door knob was broken. I am satisfied based on the undisputed testimony of the Landlord and photos that there were moths in the rental unit at the end

of the tenancy. I am satisfied based on the evidence referred to that the Tenant breached section 37 of the *Act* in relation to these issues.

I am satisfied based on the evidence referred to that the Landlord had to fix or address the issues noted. I am satisfied based on the undisputed testimony of the Landlord that doing so cost \$347.69. I find this amount reasonable given the damage and award the Landlord this amount.

Replace toilet

I have already found that the Tenant broke the toilet. I am satisfied the Landlord had to purchase a new toilet and that this cost \$227.39 based on the undisputed testimony of the Landlord. I find this amount reasonable and award the Landlord this amount.

Towel holder and duct for fan

I am satisfied based on the undisputed testimony of the Landlord and CIR that the towel holder was ripped off at the end of the tenancy. I have already found that the bathroom fan was broken. I am satisfied these issues are beyond reasonable wear and tear and find the Tenant breached section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Landlord that he had to fix the towel holder and fan. I am satisfied based on the undisputed testimony of the Landlord that he had to purchase a towel holder and parts for the fan and that this cost \$90.53. I find this amount to be reasonable given the nature of the items. It is not an excessive amount. I award the Landlord this amount.

Garbage

I am satisfied based on the undisputed testimony of the Landlord and photos that the Tenant left items, including furniture and clothes, upon vacating the rental unit. I am satisfied based on the same evidence that the Landlord had to have broken items in the rental unit removed. I find the Tenant breached section 37 of the *Act* by leaving broken items and his personal belongings in the rental unit upon vacating.

I am satisfied based on the undisputed testimony of the Landlord and photos that the Landlord had to have someone remove the items from the rental unit. I am satisfied based on the undisputed testimony of the Landlord that this cost \$364.13. I find this

amount reasonable given the number and nature of the items left as shown in the photos. I award the Landlord this amount.

Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Loss of rent for October	-
2	Patch, prime and paint 60 holes	\$2,310.00
3	Cleaning	\$100.00
4	Toilet, tub drain and faucet	\$509.25
5	Door knobs, bath fan, moths	\$347.69
6	Replace toilet	\$227.39
7	Towel holder and duct for fan	\$90.53
8	Garbage	\$364.13
9	Filing fee	\$100.00
	TOTAL	\$4,048.99

The Landlord is entitled to \$4,048.99 in compensation. The Landlord can keep the \$500.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$3,548.99 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$4,048.99 in compensation. The Landlord can keep the \$500.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$3,548.99. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 23, 2020

Residential Tenancy Branch