



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*).

The landlord applied for the following:

- a monetary order for rent and utilities pursuant to section 67 of the *Act* – Security deposit applied to the claim;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72(1) of the *Act*.

The landlord and his niece JT appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and evidence.

The landlord testified that the tenants were served with the Application for Dispute Resolution in person on March 16, 2020. The landlord's niece JT affirmed that she was a witness to the service of the Notice of Dispute Resolution documents and evidentiary material. The landlord affirmed that they also took video evidence of the service of documents. I find that the documents were served in accordance with sections 88 and 89 of the *Act*.

The tenants did not attend the hearing.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?
- Is the landlord entitled to retain the security deposit to be applied against the above noted claims, pursuant to section 38 of the *Act*?
- Is the landlord entitled to recover the filing fee from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence as well as the landlord and witness JT's testimonies not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The landlord testified the tenancy began on October 15, 2019. The monthly rent was originally \$1,700.00. The landlord reduced the rent to \$1,500.00 when the tenant CR vacated the rental unit in December 2019. The landlord was informed by the tenants in the upstairs rental unit that the tenant AJ abandoned the rental unit around middle of March 2020.

The landlord affirmed that tenant AJ paid a security deposit of \$450.00 which is held in Trust by the landlord. The tenant CR did not pay a security deposit. The landlord affirmed that he did not conduct a move-in or move-out inspection as it was the first time that he had rented a property.

Both landlord and witness JT affirmed that the rental unit was newly renovated. The landlord affirmed the rental unit, the kitchen and bathroom were left dirty. The stove and oven in the kitchen required extensive cleaning. The landlord affirmed that he had to dispose of all the garbage left in the living room and garage and submitted photographs in evidence.

The landlord testified that after the tenant AJ abandoned the unit, he noted there was damage to his rental unit and the couch had been moved outside to the car port.

The landlord affirmed in testimony that the couch was approximately two to three years old. The couch was damaged and was ripped by rodents.

The landlord testified that the tenants had not paid the hydro bills in accordance with the terms of the tenancy agreement before they left the rental unit. The amount owed was \$231.63 and \$190.11. The landlord testified that he had submitted a copy of one of the hydro bills in evidence. The landlord testified both tenants were on the tenancy agreement.

The landlord affirmed that the tenants had only paid part of October's rent and \$560.00 was outstanding together with rent for January and February 2020. The landlord requested a monetary order list of claimed expenses calculated as follows:

Receipt/Estimate	For	Amount
Copy of bills	Hydro	\$421.74
	Cleaning	\$300.00
	Garbage disposal	\$70.00
	Replacement Couch	\$595.00
Rent	October 2019 (partially paid)	\$560.00
Rent	January & February 2020	\$3,000.00
Rent	March apportioned rent to March 12, 2020	\$580.64
Total		\$5,527.38

Analysis

Based on the testimonies of the parties provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following:

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The landlord has the burden of proof to establish the landlord's monetary claims.

Damaged Couch

The landlord affirmed that the tenants left the couch outside in the car port. This was also confirmed by the landlord's witness JT. The landlord affirmed that it would be likely to be approximately \$595.00 to purchase another couch of the same size.

Policy Guideline 40 states:

“When applied to damages caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item “

I accept the landlord's evidence that couch was damaged beyond the level of ordinary wear and tear. I grant the landlord the sum of \$595.00 compensation for the replacement of the couch.

Cleaning costs

I have considered the evidence submitted by the landlord including the witness testimony and supporting evidence. I have considered the landlord's photographs taken shortly after the tenant AJ abandoned the unit required cleaning.

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

- (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...

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenants did not leave the unit reasonably clean, the kitchen units required cleaning and some of the appliances including the stove and oven required cleaning when the tenant vacated.

The tenants are responsible for the lack of cleanliness; accordingly, I find the landlord is entitled to a monetary award in the amount of \$300.00 for this aspect of the claim.

Holes

As stated above, the Act requires a tenant to leave a rental unit undamaged except for reasonable wear and tear.

A key issue with respect to this aspect of the landlord's claim is whether the holes in the living room and dining room walls, as noted by the landlord in testimony and documentary evidence, are "damages", for which the tenant must compensate the landlord, or "reasonable wear and tear", for which the tenant need not compensate the landlord.

Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states in part as follows:

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The Guideline #1, referenced above, states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the unit had been renovated before the tenants moved in and the walls were undamaged.

Guideline 1 states as follows:

Nail Holes:

- 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*
- 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.*
- 3. The tenant is responsible for all deliberate or negligent damage to the walls.*

Considering the evidence and testimony, I find the landlord has not met the burden of proof on a balance of probabilities that the tenants left the walls of the unit damaged with an excessive number and size of holes causing wall damage.

I do not accept the landlord's evidence with respect to the excessive number and size of the holes in the rental unit. The holes are regarded under the *Act* and the Residential Tenancy Policy Guidelines as "reasonable wear and tear" Accordingly, I find that the landlord is not entitled to any monetary award for the holes in the wall.

Garbage.

The landlord testified that when the tenant AJ vacated, the landlord noted garbage and trash in the garage and in the living room. The landlord affirmed that it cost him approximately \$70.00 to dispose of the garbage. On viewing the photographs submitted as evidence by the landlord. I find it reasonable the landlord is entitled to a monetary award of \$70.00 for disposing of these items.

Hydro

The landlord claimed a monetary compensation for \$421.74 for outstanding utilities. It is incumbent on the landlord to submit evidence in support of his claim. The landlord submitted a copy of the hydro bill and affirmed that the second utility bill was for \$190.11. It was the tenants' responsibility to ensure that the tenants paid the hydro bills

on vacating the rental unit. The landlord submitted a copy of the hydro bill. I allow the landlord's claim for the sum of \$421.74

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

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

Based on the testimony of the landlord and his witness. I find that the tenant AJ abandoned the rental unit and did not provide a forwarding address. The landlord filed for Dispute Resolution on March 13, 2020 as soon as he was notified by his tenants' in the upstairs unit that the tenant AJ had moved his belongings and abandoned the rental unit around the middle of March 2020.

	ITEM	Amount
copies	Hydro utility bills	\$421.74
	Cleaning	\$300.00
	Garbage disposal	\$70.00
Receipt	New Couch	\$595.00
Rent	October 2019 (partially paid)	\$560.00
Rent	January & February 2020	\$3,000.00
Rent	March 2020– apportioned rent (12 days)	\$580.64
	deduct Security deposit	(\$450.00)
Total		\$5,077.38

Accordingly, I allow the landlord to retain the sum of \$450.00 for the security deposit pursuant to section 72 of the *Act*. On the balance of probabilities, the landlord has been successful in his monetary application. I find that the landlord has provided sufficient evidence to prove or verify the value of the loss or damages claimed.

As the landlord has been successful in his application, he may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The landlord is granted a monetary order in the amount of **\$5,177.38**

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file, the order in the Provincial Court (Small Claims) to be 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: July 07, 2020

Residential Tenancy Branch