



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL, MNDCL-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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the first of three documentary evidence package(s) on March 17, 2020 and March 24, 2020.

I find that both parties have been properly served with the landlord's notice of hearing package and the first documentary evidence package as per sections 88 and 89 of the Act.

The landlord submitted two late documentary evidence package(s) which are crucial to her monetary claim. The landlord stated that both packages were served via Canada Post Registered Mail on July 18, 2020. The tenant stated that she as of the date of this hearing has not yet received it. The landlord provided a Canada Post Customer Receipt Tracking Number (noted on the cover of this decision). The landlord stated that an online search of the Canada Post Website states that the package was delivered to the tenant's PO Box. The tenant stated that she was a nurse and that she is currently

working 16 hour work shift(s) and as a result only checks her mail once every 6 days. I find in the circumstances that as the late second and third documentary evidence package(s) by the landlord are crucial to her claim and as the tenant has been unable to collect the said package prior to the hearing that an adjournment is warranted. As this is a monetary claim, I find that there is no prejudice to either party for an adjournment. It is in fact an issue of allowing both parties a fair and just opportunity to speak to the issues. On this basis, this hearing shall be adjourned. The tenant was also directed to collect the two documentary evidence package as soon as possible.

Both parties were notified that a new notice of an adjournment shall be served to both parties to those addresses confirmed in the landlord's application for dispute. Both parties were also cautioned that no new evidence or amendments were to be submitted as the hearing has commenced. An exception for the submission of evidence is for the tenant in response to the landlord's second and third evidence package(s). The tenant is directed that if she so chooses to submit rebuttal documentary evidence in response to the landlord's two late documentary evidence package(s) that the tenant must serve copies to the Residential Tenancy Branch and the Landlord no later August 10, 2020 (17 days).

On August 31, 2020 the hearing resumed with both parties in attendance via conference call. At the outset, the tenant stated that she was at work and would not be able to participate in the hearing. The tenant requested an adjournment. The tenant stated that she had arranged for a co-worker to cover her absence but was informed on August 28, 2020 that the co-worker was ill and could not cover her shift. The landlord disputed the tenant's request stating that the hearing had already been delayed to allow the tenant an adjournment to pick up her mailed evidence. I find in the circumstances that the tenant has been given an opportunity in an adjournment to respond to the landlord's application. I understand that events change, but the scheduling of work cannot be considered for an adjournment for this hearing. I find that a further adjournment would be prejudicial to the landlord. The tenant's request for an adjournment was denied. At that time the tenant stated that she could not participate and she disconnected the call. The hearing proceeded in the absence of the tenant.

The landlord stated that she had provided an amended monetary worksheet but did not file an amendment to increase the monetary claim to \$4,409.05. I find on this basis that the landlord failed to file a proper amendment to the application for dispute increasing the monetary claim and serve it upon the tenant. On this basis, the tenant's application is limited to the original claim filed as \$3,864.99 as it would be highly prejudicial to the tenant in her absence. The landlord clarified then that the second page of the submitted

monetary worksheet was cancelled as such and that the original claim filed is listed on the first page listing 10 items except for the request for recovery of the \$100.00 filing fee. The hearing shall proceed on these 10 items the request for the filing fee.

During the hearing the landlord cancelled parts of the monetary claim listed below.

| | |
|------------|--------------------|
| \$1,250.00 | Unpaid Rent, April |
| \$200.00 | Cleaning |

The hearing shall proceed on the remaining listed items below.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 28, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 11, 2019. The monthly rent was \$1,250.00 payable on the 28th day of each month. A security deposit of \$625.00 was paid.

The landlord seeks an amended and clarified monetary claim of \$2,214.70 which consists of:

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|------------|--|
| \$1,250.00 | Unpaid Rent, March |
| \$150.00 | Unpaid Hydro, February \$100 + March \$50 |
| \$200.00 | Missing Firewood |
| \$50.00 | Labor to replace firewood |
| \$40.00 | Missing Kindling, 4 bundles @ \$10/ea |
| \$107.51 | Replace Missing items, 2 pillows cases and 2 shams |
| \$166.88 | Replace Damaged chair cover |
| \$125.00 | Steam Clean, Couch and Chair |

| | |
|------------|---|
| \$25.31 | Replace 4 Damaged stove inserts (covers under the heating elements) |
| \$100.00 | Filing Fee |
| \$2,214.70 | total |

The landlord stated that the tenancy ended on March 9, 2020 when the tenant abandoned the rental unit and had notified the landlord after on March 10, 2020. The landlord stated that a 10 Day Notice for Unpaid Rent was served on the tenant on March 1, 2020 as the tenant did not pay rent of \$1,250.00 for March before vacating on March 9, 2020.

The landlord seeks recovery of partially unpaid utilities totalling \$150.00 for February of \$100.00 and of \$50.00 for March. The landlord provided undisputed affirmed testimony that the tenant was responsible for paying \$100.00 for utilities every month. The landlord stated that as the tenant had vacated on March 9, 2020 only \$50.00 was sought for March 2020.

The landlord also stated that the tenant used the landlord's stock of "seasoned" firewood without their permission or knowledge. The landlord stated that the tenancy does not provide for any firewood. The landlord stated that she obtained a verbal estimate via telephone in which the missing portion of the "seasoned" firewood would cost \$200.00. The landlord also seeks an estimated compensation of \$50.00 for labour in transporting any firewood that would be obtained. The landlord stated that because of the distance and the landlord's physical stature delivery of the firewood would be required.

The landlord seeks \$40.00 for the cost of missing kindling wood that the tenant had taken and used without the landlord's consent. The landlord stated that based upon her knowledge of local estimates that 4 bundles were missing at \$10.00 per bundle.

The landlord seeks \$107.51 for the cost of replacing two pillow covers and two shams that were provided as part of the furnished rental. The landlord stated that after vacating the rental the landlord discovered that the tenant had taken these items. The landlord has provided a screenshot of an online search for an estimate for a similar replacement.

The landlord seeks \$166.88 as compensation for replacement of a damaged chair slip cover for \$149.00. The landlord claims the difference is for associated taxes. The

landlord stated that the chair slip cover was damaged as shown in the submitted photographs of the chair slip cover on the chair. A review of the photographs show discoloration in the white covers which appear to be stains. The landlord stated that the stains were not cleanable.

The landlord seeks \$125.00 for the estimated cost of steam cleaning a chair and couch. The landlord stated that the chair and couch appear to be stained as shown in the submitted photographs. The landlord relies upon an estimate obtained via telephone from the local cleaning service.

The landlord seeks \$25.31 for the estimated replacement cost of 4 damaged stove inserts. The landlord relies upon the submitted photographs of the damaged covers and the online search for the estimated replacement cost.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that the landlord has established a claim for unpaid rent, unpaid utilities and damaged items. The landlord provided photographs and printouts of online searches for estimated replacement costs. On this basis, the landlord has established a claim for the \$2,214.70. This includes recovery of the \$100.00 filing fee.

I also authorize the landlord to retain the \$625.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,589.70.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: July 24, 2020

Residential Tenancy Branch