



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

MNRL, MNDL, FFL

Dispute Codes

Introduction

This hearing dealt with the landlord's application for monetary compensation for unpaid rent and damage and cleaning costs; ~~and, authorization to retain the tenant's security deposit.~~ Two agents appeared on behalf of the landlord but there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord's agent testified the Application for Dispute Resolution and evidence was sent to the tenant via email on June 4, 2020 to an email address the tenant provided to them on June 3, 2020. The landlord had not provided proof of service documents and I ordered the landlord's agent to do so during the hearing, which LF did.

Pursuant to an order of the Director issued on March 30, 2020, which was in effect until June 24, 2020, parties were authorized to serve documents, including dispute resolution proceeding materials, via email due to the COVID-19 pandemic. Upon review of the emails, I was satisfied the landlord sent the hearing package and evidence to the tenant using the email address the tenant provided to the landlord, as described by the landlord's agent. As such, I found the tenant to be duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in the amounts claimed against the tenant?
2. ~~Is the landlord authorized to retain the tenant's security deposit?~~
3. Award of the filing fee.

Background and Evidence

The parties entered into the original tenancy agreement for a tenancy set to commence on January 15, 2016. The parties entered into a subsequent tenancy agreement that started August 1, 2018 for a fixed term of one year. The tenancy continued on a month to month basis upon expiry of the fixed term. The rent was set at \$1612.00 payable on the 15th day of every month and the rent was increased to \$1652.00 starting August 2019. The landlord collected a security deposit of \$775.00 but the landlord submitted the security deposit was refunded to the tenant on June 5, 2020.

The landlord's agent testified that the parties had been to a dispute resolution proceeding on December 2, 2019 to deal with a 1 Month Notice to End Tenancy for Cause and the tenancy came to an end pursuant to that dispute. The landlord's agent provided me the file number which I have recorded on the cover page of this decision).

As recorded by the Arbitrator presiding over the December 2, 2019 hearing:

“The Landlord said in closing that they want to end the tenancy, but they are willing to extend the effective vacancy date to January 15, 2020 on the condition that the Tenant pays the December 2019 rent of \$1,652.00.”

The Arbitrator presiding over the December 2, 2019 hearing upheld the 1 Month Notice and provided the landlord with an Order of Possession effective January 15, 2020.

The landlord testified that the tenant gave the landlord a cheque dated December 15, 2019 in the amount of \$1652.00 but that it was dishonoured.

The tenant vacated the rental unit sometime during the week of January 1 – 6, 2020. The landlord received the keys in the mail the second week of January 2020. In an email, the landlord invited the tenant to participate in a move-out inspection. The tenant responded, via email, and declined to participate in the move-out inspection. The landlord's agent proceeded to do a move out inspection without the tenant on January 14, 2020.

By way of this application, the landlord seeks to recover unpaid rent that ought to have been paid on December 15, 2019 in the amount of \$1652.00. The landlord provided an email that includes an image of a partial bank statement to show the tenant's rent payment was dishonoured, and the tenant's rent ledger.

In addition, the landlord seeks to recover costs to rectify wall damage in the amount of \$918.75, including tax. The landlord's agent described damage to the walls in the entry hall, living room and especially in the second bedroom. The landlord's agent LF testified she did not know the last time the rental unit had been painted. The landlord's agent CI testified that the landlord always repaints rental units between tenancies. LF pointed out that the landlord is only seeking the cost to patch and repaint the damaged walls. The landlord provided a copy of the wall repair invoice and photographs to support this claim.

The landlord is also seeking to recover costs to clean the rental unit at the end of the tenancy in the amount of \$236.25. The landlord's agent described the rental unit as being unclean in the bathroom and kitchen and some garbage was left behind. The landlord's agent pointed out the tenant stated in her email to the landlord that she would not be doing any cleaning. The landlord provided a copy of the cleaning invoice and several photographs of the rental unit at the end of the tenancy showing areas that required cleaning.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Based on the unopposed evidence before me, I accept the tenant was required to pay rent of \$1652.00 on the 15th day of the month. The parties participated in a dispute resolution proceeding on December 2, 2019 to deal with a 1 Month Notice to End Tenancy for Cause. Pursuant to that proceeding, the tenant was to return possession of the rental unit by January 15, 2020. The tenant remained in possession of the rental unit on and after December 15, 2019 and her rent payment was dishonoured. The tenant returned possession of the rental unit to the landlord in the first part of January 2020. In these circumstances, I find the landlord entitled to recover unpaid and/or loss of rent from the tenant for the period of December 15, 2019 through January 14, 2020 in the amount of \$1652.00 and I award that amount to the landlord.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted

on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the landlord's photographs and condition inspection report, I accept that there was some damage to the walls in the rental unit caused during the tenancy that exceeded ordinary wear and tear, especially in the second bedroom and the entry way, and a wall in the living room. I find the tenant is responsible for compensating the landlord for losses incurred as a result of the damage.

The landlord produced an invoice for the wall repair and the work was described as follows by the painter:

Painting:			
As per walk thru inspection.			
*Repair and paint main wall in living room.			
*Repair and paint damaged wall in master bedroom.			
*Repair, prep. and paint all walls in 2nd bedroom.			
*Preparation and paint 6 walls total in entry way and hallway areas.			
*Paint and match existing colors.			\$875.00
Paint extra walls in master bedroom were showing marks.			No charge.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Interior painting has an average useful life of four years according to policy guideline 40; however, the landlord's agent CI testified that they repaint after every tenancy. As such, I am of the view that some of the cost to repaint the unit is attributable to wear and tear and the landlord's ordinary cost of doing business. Considering the tenancy was four years in total, it would appear to me the rental unit was due for repainting in any event. However, I recognize that the tenant caused damage to the rental unit and the damage would require extra effort in repairing and preparing the walls. From the invoice provided to me it is impossible to identify the cost to repair damage versus repainting. As such, I find it reasonable in the circumstances to provide a reasonable estimation as

opposed to dismissing the landlord's claim. Therefore, I hold the tenant responsible for one-third of the paining invoice for an award of \$306.25 [$\$918.75 / 3$].

With respect to cleaning, section 37 of the Act requires that the tenant leave the rental unit "reasonably clean" at the end of the tenancy. I find the landlord provide sufficient evidence by way of the photographs, cleaning invoice and condition inspection report to satisfy me that the tenant did not clean the rental unit. Therefore, I grant the landlord's request to recover the cost to clean the rental unit in the amount claimed of \$236.25.

I award the landlord recovery of the \$100.00 filing fee.

~~I authorize the landlord to retain the tenant's security deposit in partial offset of the amounts awarded to the landlord with this decision.~~

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid and/or loss of rent	\$1652.00
Wall damage	306.25
Cleaning	236.25
Filing fee	100.00
Less: security deposit	<u>(775.00)</u>
Monetary Order for landlord	\$1519.25 <u>\$2294.25</u>

Conclusion

The landlord is ~~authorized to retain the tenant's security deposit and the landlord is~~ provided a Monetary Order for the balance owing of ~~\$1519.25~~ \$2294.25 to serve and enforce upon the tenant.

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: October 09, 2020

Corrected: November 03, 2020

Residential Tenancy Branch