



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m.

The landlords attended the hearing and was given a full opportunity to be heard, to present sworn 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 landlords 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 Proceedings package by email in accordance with the substitutional service order granted to her. She provided the email address of the tenant and testified it was emailed to him at that address at 11:45 a.m. on July 17, 2020. The landlord testified that she has not received a response to the email from the tenant and that the tenant has stopped communicating with her at the end of May, 2020. I am satisfied the tenant has served the tenant with the Notice of Dispute Resolution Proceedings package in

accordance with the director's order allowing for substituted service pursuant to section 71 of the Act. This hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Can the landlord retain the security deposit and pet damage deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a brand-new coach house completed right before the tenancy began. There is also a main house located on the property with 2 rental units, not involved in this dispute.

The fixed one-year tenancy began on November 1, 2019 with rent set at \$1,400.00 plus utilities payable on the first day of each month. At the commencement of the tenancy, a security deposit of \$700.00 and a pet damage deposit of \$200.00 was collected which the landlord continues to hold. The parties did not conduct a condition inspection report at the commencement of the tenancy because the rental unit was brand new with no existing damage since it had never been previously occupied.

On April 23, the tenant texted the landlord advising that he had been laid off due to the Covid-19 pandemic. He would be travelling to Ontario and would return in mid-May. On June 23rd, the occupants in the main house witnessed people going in and out of the coach house and moving the tenant's possessions out. These occupants advised the landlord who posted a 72 hour notice to enter the unit on June 29th. On July 2nd, the landlord entered the rental unit and discovered it had been abandoned with the keys left on the kitchen counter and garbage and debris left throughout the unit. The landlord returned the following week and took photographs of the rental unit as it appeared when the tenant vacated it. Those photos were provided as evidence by the landlord.

The landlord testified they cleaned the unit themselves and took a load of the tenant's garbage to the dump. Included in the load was the tenant's furniture which the landlord described as falling apart with no monetary value. An invoice of \$64.00 for the trip to the dump was provided as evidence.

The landlord provided photos of 5 sets of blinds that were each damaged beyond repair by the tenant. The landlord paid a blind company \$284.55 to have the blinds replaced and she submitted an invoice for the same.

Besides the cleaning and blinds, the tenant kicked a hole in the kitchen cabinet and made a hole in the front wall. The tenant also put dents in the landlord's brand new oven and refrigerator. Lastly, the tenant made multiple dents and scuff marks in the laminate flooring throughout the rental unit. Photos of the damaged items were provided as evidence by the landlord.

The landlord provided a quote from a home renovation company in the amount of \$4,935.00 including GST to remove and replace the floors, fix and paint the walls, and repair or replace doors and cabinet doors. Various other receipts for floor filler, cabinet paint and baseboard paint were supplied as evidence by the landlord.

The landlord testified that after the tenant abandoned the rental unit, she sent him texts on July 7th and July 12th asking him to attend the rental unit for a condition inspection, return of the security deposit and to be provided with the tenant's forwarding address. The landlord testified she has not had any response from the tenant.

Regarding unpaid rent, the landlord testified that the tenant paid rent as follows:

Month	Amount due	Amount paid	Balance owing
April	\$1,400.00	\$800.00	\$600.00
May	\$1,400.00	\$1,400.00	\$600.00
May	(none)	\$85.71	514.29
June	\$1,400.00	\$0.00	\$1,914.29

The landlord seeks compensation of \$1,914.29 in arrears from the tenant.

Analysis

Section 21 of the Residential Tenancy Regulations states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Despite not having conducted a condition inspection report with the tenant at the commencement of the tenancy, I am satisfied by the undisputed testimony of the landlord that the rental unit was brand new, never lived in before and that the state of repair and condition of the rental unit was pristine and untouched. I begin this analysis

on the preponderance of evidence that the rental unit had no damage at the start of the tenancy.

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord has provided undisputed testimony and provided photographs that satisfy me the tenant damaged the blinds beyond repair. The landlord has provided invoices to prove the cost to replace the blinds was **\$284.55**. The landlord is awarded this amount.

The photographs of the garbage and debris left behind by the tenant when he vacated the rental unit satisfies me that the landlord was required to take a trip to the dump to dispose of the tenant's garbage. I award the landlord the **\$64.00** the landlord paid to do so.

The landlord provided a single photograph of a scuff mark sustained to the laminate flooring, although she testified damage to the floors was done throughout the rental unit. I find the landlord has not provided sufficient evidence to satisfy me the extent of the damage requires a full replacement of the floors. I award the landlord the recovery of the **\$30.23** she paid for floor filler from Home Depot.

The estimate provided to remove and dispose of the original laminate flooring and underlay as well as supply and install new laminates will not be awarded as the landlord has not satisfied me the extent of the damage to the laminate floors.

The landlord supplied evidence of the dented doors and walls corroborating her testimony that the tenant damaged them during the tenancy. The invoices from Home Depot and the paint supply company to repair them, **\$34.59** and **\$39.25** respectively are sufficient evidence to satisfy me the value of the damage. Both are awarded to the landlord.

The estimate from the renovation company for the labour and supplies to conduct the work of repairing the walls, doors and baseboards does not specifically break down the cost of each repair, separate from the estimate to replace the flooring which was previously dismissed. I find I am unable to determine the value of the loss (point 3 of the 4-point test). For this reason, I dismiss this portion of the landlord's claim.

The landlord has provided uncontroverted evidence that the tenant either made partial payments of rent or completely failed to pay rent during the period from April, 2020 to June 2020. I am satisfied the tenant abandoned the rental unit in June of 2020 and that the tenant was obligated to pay rent up until that time in accordance with section 26 of the Act. The landlord is entitled to a monetary order for unpaid rent in the amount of **\$1,914.29**.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security and pet damage deposits totaling **\$900.00**. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's entire security deposit and pet damage deposit in partial satisfaction of the monetary claim.

Item	amount
Blinds x 5	\$284.55
Garbage dump fee	\$64.00
Floor filler	\$30.23
Cabinet paint from Home Depot	\$34.59
Baseboard Paint	\$39.25
Arrears in rent	\$1,914.29
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$900.00)
Total	\$1,566.91

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,566.91**.

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 27, 2020

Residential Tenancy Branch