



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 510 Agnes Property GP Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with a landlord's application for unpaid rent, cleaning and damage costs; and, authorization to retain the security deposit.

The landlord's agents appeared for the hearing; however, there was no appearance on part of the tenant. The landlord's agent submitted the proceeding package was sent to the tenant via registered mail on July 10, 2020 using an email he had provided to them in an email of June 15, 2020. The landlord's agent orally provided the registered mail tracking number (recorded on the cover page of this decision) and a copy of the email providing for the forwarding address; and, the landlord's agent testified the registered mail was successfully delivered. I was satisfied the tenant was 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 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 tenancy started on November 1, 2019 and was set to be a fixed term expiring on October 31, 2020. The tenant was required to pay rent of \$1428.00 on the first day of every month and the tenant paid a security deposit of \$714.00.

The landlord's agent testified that there was a move-in inspection but a move-in inspection report was not provided to me and the landlord's agent could not locate a copy of move-in inspection report.

On June 22, 2020 the tenant returned possession of the rental unit to the landlord. A move-out inspection was held with a person appointed by the tenant to act as his agent.

The tenant's agent signed the move-out inspection report but it is unclear as to whether the tenant's agent agreed or disagreed with the landlord's assessment of the property. The tenant's agent signed a document entitled "Final Billing and Security Deposit Returns" on June 22, 2020 although there is no description as to what the signature represents including: whether there is agreement for deductions from the security deposit or an agreement the tenant owes the landlord the amounts appearing on the document.

The landlord's agent was prepared to present its claims against the tenant and seek my authorization to retain the security deposit given the lack of certainty on the above-described documents.

Below, I have summarized the landlord's claims against the tenant.

1. Unpaid rent

The landlord submitted the tenant failed to pay rent for the months of May 2020 and June 2020 and the landlord seeks to recover unpaid rent of \$2856.00 for these months. The landlord provided a copy of the tenancy agreement and ledger in support of this claim.

2. Cleaning

The landlord is seeking cleaning costs of \$270.00 because the tenant failed to leave the rental unit sufficiently clean. The landlord provided an invoice for a "move in clean" done in the rental unit on June 27, 2020 that shows a charge of \$270.00 plus tax. the move-out inspection report indicates several areas were dirty and the landlord provided several photographs in an effort to demonstrate cleaning was required.

I noted that the "Final Billing..." document indicates the landlord was seeking cleaning costs of \$230.00. The landlord's agent responded that the landlord tries to be reasonable in charging tenants.

3. Repairs to blind and walls

The landlord is seeking \$85.00 to repair a blind and to touch up wall damage. The landlord's agent testified the blind required re-stringing; however, the move-out inspection report indicates the blind was burned. There was no photograph of the damaged blind provided.

The landlord's agent stated the rental unit was new at the start of the tenancy and it did not look new at the end of the tenancy. The move-out inspection report indicates the walls were scratched; however, the photographs show scuff marks.

The landlord did not have an invoice to support this claim, explaining that this work was done by in house staff persons; however, the landlord's agent stated they have "standard charges" that tenants are notified of.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

With respect to all of the evidence before me, I provide the following findings and reasons.

Unpaid rent

The tenancy agreement provides that the tenant would pay \$1428.00 per month for the duration of the tenancy. I accept the unopposed evidence that the tenant failed to pay rent for May 2020 and June 2020 and the tenant retained possession of the rental unit into the month of June 2020. Therefore, I find the landlord entitled to recover unpaid rent of \$2856.00 from the tenant for these months.

Cleaning

Section 37 of the Act requires a tenant to leave a rental unit “reasonably clean” at the end of the tenancy. If a landlord incurs costs to bring the rental unit to a higher level of cleanliness such costs are those of the landlord, not the tenant.

I find the move-out inspection report and the photographs are sufficiently consistent that I accept that the rental unit was not left reasonably clean. The landlord is attempting to recover the cost of a “move-in” clean which was presumably done after the repairs and likely represents costs to bring the rental unit beyond a “reasonably clean” condition. Therefore, I award the landlord the lesser amount of \$230.00 appearing on the “Final Billing” for cleaning.

Repairs

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.

The landlord presented two components to this claim: blind damage and damage to walls.

With respect to the blinds, I find the landlord provided inconsistent evidence. The move-out inspection report indicates the blind was burned but the landlord’s agent testified it required re-stringing. There was no photograph of a damaged blind and no invoice, work order or time sheet that would point to the work that was required, if anything. Therefore, I find I am unsatisfied that the tenant caused damage to the blind or caused the landlord to incur a loss as claimed.

As for the wall paint touch ups, upon review of the photographs, I find I am not persuaded that the walls were damaged beyond wear and tear. I see a few scuff marks; however, as I stated to the landlord’s agent at the hearing, it is unreasonable to

expect a rental unit to look brand new after it has been occupied. Therefore, I am unsatisfied the tenant is responsible for compensating the landlord for wall damage.

In light of the above, I dismiss the landlord's claims for repairs against the tenant.

Filing fee, security deposit and Monetary Order

The landlord had success in this Application for Dispute Resolution and I award the landlord recovery for the \$100.00 filing fee.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above findings and awards, I provide the landlord with a Monetary Order in the net amount calculated below to serve and enforce upon the tenant.

Unpaid rent – May 2020 and June 2020	\$2856.00
Cleaning	230.00
Filing fee	100.00
Less: security deposit	<u>(714.00)</u>
Monetary Order	\$2472.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$2472.00 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: November 04, 2020

Residential Tenancy Branch