



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on November 6, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing, with his agent. The Tenant did not attend the hearing. The Landlord applied for an order for substituted service and was granted permission to serve the Tenant via email in a decision dated July 14, 2020. The Landlord stated they sent an email to the Tenant with all the hearing documents (application, evidence) on July 17, 2020. As stated in that decision, emailed documents would be deemed served 3 days after they were sent, on July 20, 2020. I find the Tenant is deemed served with the Landlord's application and evidence on July 20, 2020.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

The Landlord testified that monthly rent was set at \$1,800.00, and was due on the first of the month. The Landlord holds a security deposit of \$500.00. The Tenant rented a fully furnished rental suite, which included utilities. The Landlord stated that there is no written tenancy agreement. The Landlord explained that the Tenant moved in at the beginning of May 2020, and moved out on June 19, 2020, without notice.

The Landlord stated that May rent was paid, in full, but only the \$500.00 rent subsidy was received for June.

The Landlord explained that the Tenant was hostile, and aggressive right after she moved in, and tried to extort money out of him, before she moved out. The Landlord stated that she created issues where there were none (complaining about internet connection), and made attempts to purposefully damage some of the furnishings and the rental unit before she left suddenly in June.

The Landlord applied for \$6,478.00 based on the following items:

1) \$399.00 – Cleaning Fees

The Landlord explained that when the Tenant left, she left a large mess, lots of garbage, tape on the walls, debris everywhere, and it took many hours to clean and clear out the unit. The Landlord stated that they hired a cleaning company to come and clean the unit (receipt provided), and it took them 9.5 hours to clean the unit after the Tenant vacated.

2) \$100.00 – Parking pass replacement

The Landlord explained that the Tenant was given a parking pass when she moved in, and when she moved out, she did not return the key. The Landlord provided a receipt

showing that it cost \$100.00 to replace the missing key. The Landlord stated that this is a fee that he had to pay to the company who manages the entrance to the parking area.

3) \$120.00 – Couch Cushion Replacement

The Landlord stated that the Tenant melted two of the couch cushions and they both need replacement. The Landlord stated they looked on the Ikea website for replacement cushions, and also talked to a seamstress about having new cushions made. The Landlord estimated that it will cost this amount to replace or repair the cushions. The Landlord did not state if they have replaced the cushions yet.

4) \$134.40 – Wifi Booster

The Landlord explained that internet is included in rent, and when the Tenant moved in, she immediately started complaining about the poor connectivity. The Landlord stated that the Tenant bombarded them with a barrage of texts/emails in or around May 11, 2020. The Landlord stated that they believed it was from all the extra internet traffic in the neighbourhood due to COVID, people working from home, and also due to it being a holiday weekend. The Landlord stated that the Tenant complained that the coverage in the rental unit was not sufficient and was spotty.

The Landlord stated that this was the first complaint they have had regarding the internet in many years, and to calm the Tenant, they bought a wifi extender from Telus for the above amount. The Landlord stated that they delivered it to the Tenant to assist her connectivity. However, she refused to connect it, and left it out on the porch. The Landlord stated that they were unable to return the item because of COVID protocols, and are now stuck with the device that was never really needed in the first place. A receipt for this item was provided.

5) \$365.00 – Legal fees

The Landlord stated that after receiving aggressive text messages from the Tenant with specific demands, he hired a lawyer to draft a contract and agreement to meet her demands and to try to end the tenancy. The Landlord provided a receipt for these fees, as well as a copy of the mutual agreement drafted by the lawyer. The Landlord stated that the Tenant still refused to sign any of the paperwork.

6) \$200.00 – Filing fee costs

The Landlord stated that the Tenant created such a difficult situation, filing two applications of her own, with limited timelines, that it limited the Landlord's ability to file in an effective and timely manner for their applications. The Landlord is seeking the recovery of a previous filing fee, as well as this filing fee.

7) \$520.00 – Labour charges

The Landlord explained that on June 16, 2020, when the Tenant left the rental unit to go to Vancouver for a couple days, she left the windows all wide open, and the electric baseboard heaters on full. The Landlord also explained that on June 17, 2020, when he walked by the front of the rental unit, he smelled smoke. The Landlord stated that he called the fire department, who arrived shortly, and found all the baseboard heaters on full, windows open, and many items suspiciously adjacent or on top of the heaters.

The Landlord stated that the Tenant had the couch pressed right up against the heaters, and once they gained access after smelling potential smoke, it was apparent the couch had been purposely put against the heater. The Landlord noted that the couch was literally melting, as documented in the Fire Report. The Landlord stated that he always kept the couch a safe distance away from the heater, but the Tenant had it pressed right against.

The Landlord stated that given the hostile relationship, the Landlord believes this was an attempt to either damage the unit or burn it down. The Landlord provided a report from the fire department, which ordered him to be on "fire watch" for a period of 8 hours, to ensure nothing ignited further, and burned down the building. The Landlord stated that he had to spend 8 hours of his day watching the unit for fire, as per the order, and all because the Tenant left the heat on high, with items blocking the airflow. The Landlord is asking for \$65.00 per hour for his time.

8) \$390.00 – Landlord's time spent cleaning

The Landlord stated that, in addition to the cleaners he had to hire, he also spent 6 hours removing garbage, cleaning walls, emptying the fridge, removing tape from walls, and cleaning up the rental unit. The Landlord stated that this was a furnished rental, and there were many dirty dishes, stains on walls, and dirty appliances. The Landlord is seeking his hourly rate of \$65.00 per hour time by 6 hours. The Landlord provided photos of the garbage and the mess.

9) \$1,050.00 – Agent Fees

The Landlord stated that he had to hire an agent to assist him in dealing with the fallout from this tenancy. The Landlord stated, and provided an invoice to show that he paid the above noted amount to gather evidence, manage the disputes, and help with the repairs and the cleaning. The Landlord stated that this was as flat rate that was charged, and no hourly breakdown was provided. The Landlord stated that it took so many hours to deal with this tenant, that this is actually less than what he should have paid his agent.

10) \$3,100.00 – Rent losses

The Landlord stated that the Tenant vacated the rental unit on or around June 19, 2020, with no advance notice. The Landlord stated that this was a month to month tenancy, and the Tenant would have been required to give at least one month notice in order to legally end the tenancy. The Landlord stated that the Tenant did not pay any rent for June, except for the \$500.00 rent subsidy they received from the Government for that month. As such, the Tenant still owes \$1,300.00 for June.

The Landlord explained that he also wants the Tenant to pay for July rent, which was \$1,800.00, due to her short notice. The Landlord stated he was able to re-rent the rental unit at the beginning of July for the same amount of rent.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord applied for \$6,478.00 based on the following items:

1) \$399.00 – Cleaning Fees

I note the following portion of the Act:

*37 (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*

I accept the Landlord's undisputed testimony that the Tenant left behind a substantial mess, which warranted many hours of cleaning. The Tenant is responsible for returning the rental unit in a reasonably clean state. However, this was not done, and the Landlord is entitled to recover the costs incurred to return it to a re-rentable and reasonably clean state. I award this item in full.

2) \$100.00 – Parking pass replacement

I accept the undisputed testimony that the Landlord gave the Tenant a parking pass at the start of the tenancy, which the Tenant failed to return at the end of the tenancy. I accept that this cost the Landlord \$100.00 to replace. I find the Tenant should have returned all keys to the Landlord at the end of the tenancy, and in failing to do so, she breached section 37(2)(b) of the Act.

*37 (2)When a tenant vacates a rental unit, the tenant must
(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

3) \$120.00 – Couch Cushion Replacement

I accept the Landlord's undisputed testimony that the Tenant caused excessive damage to two of the couch cushions, such that they both needed either recovering or replacing. However, I do not find it sufficiently clear how this amount was calculated. I accept that the Tenant caused damage, well beyond reasonable wear and tear, and that she violated section 37 of the Act. I find the Tenant is liable for some of this item.

I note that I may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal award is appropriate in this case. I award the Landlord \$100.00 for the damaged cushions.

4) \$134.40 – Wifi Booster

Having reviewed this matter, I accept that internet was included in rent, but there is no evidence that it had to be “wifi” and that it had to cover all rooms in the house. Although the Tenant complained about the coverage, I do not find the Landlord was under any obligation to ensure wifi was available in every part of the rental unit. I find the Landlord was under no obligation to go and purchase a wifi extender and it was his choice to purchase this equipment. I find there is insufficient evidence to show the Tenant is responsible for this item. I dismiss it, in full.

5) \$365.00 – Legal fees

Having reviewed this matter, I note there are standard mutual agreement forms on the Tenancy Branch website. I also note the Landlord chose to hire a lawyer rather than draft an agreement himself or use one of the templated mutual agreements on our website. In any event, it was the Landlord’s choice to hire a lawyer, rather than utilize alternative methods of dispute resolution, including filing an application for dispute resolution for help on the matter. I do not find the Tenant is responsible for this item. I dismiss this item, in full.

6) \$200.00 – Filing fee costs

As stated in the hearing, the recovery of a filing fee is awarded at that specific hearing, based largely on whether or not the application is successful. I decline to award filing fees for other hearings. Since the Landlord is partially successful for this application, I award \$100.00 for the cost of this application, but dismiss the request for the other filing fee. I award \$100.00 pursuant to section 72 of the Act.

7) \$520.00 – Labour charges

Having reviewed this matter, I accept the undisputed testimony and evidence showing that the Tenant left the heat on full, windows wide open, and several items pressing

right up against the heater. I find the Tenant's actions were negligent and suspicious, especially given the hostility at the time. It appears, as per the "Fire Report", that a fire was "imminent", based on where the Tenant had placed items, particularly the couch. I accept that the couch was not normally in that position, and that the Tenant caused or contributed the dangerous placement of the couch, next to the heater. I also find it negligent to have all thermostats on high, with all windows open, while going out of town for multiple days. I find it more likely than not that the Tenant was responsible for the house nearly burning down, had the Landlord not been so vigilant. I find the Tenant's negligence caused damage to the couch (melted), and I find she breached the Act by causing damage in this regard.

I accept that the Landlord was required, as per the Order from the Fire Department, to monitor the premises for 8 hours, following the near fire. As this was due to the Tenant's negligence, I find she is liable for the Landlord's lost time. However, I do not find \$65.00 is a reasonable hourly rate. I acknowledge this is what the Landlord's professional rate is, for his other business. However, in relation to his duties under the Act, as a Landlord, I find a more reasonable rate is \$30.00 per hour. I award \$240.00 for the 8 hours he lost.

8) \$390.00 – Landlord's time spent cleaning

I accept the undisputed testimony and evidence regarding the mess left behind by the Tenant. There was a substantial amount of garbage and mess, all of which would likely have taken many hours to clean. Pursuant to section 37(2) of the Act, I note the Tenant is required to leave the rental unit reasonably clean. However, this was not done and the Tenant violated the Act in this regard. I find the Landlord's estimates for time are reasonable. I accept that he spent 6 hours, but as previously stated, I find a more reasonable hourly rate for time spent cleaning is \$30.00 per hour. I award \$180.00 for his time spent cleaning.

9) \$1,050.00 – Agent Fees

I have reviewed this item, along with supporting evidence and testimony. I accept that the Landlord would have incurred costs dealing with the Tenant's different breaches of the Act, including damage to the unit, failure to repair and maintain, and failure to return the unit in a reasonably clean state. I find the Tenant is liable for some of the Landlord's costs on this matter, particularly relating to managing repairs, and remediation, but I also find it likely that some of the costs the Landlord paid for this item are considered a normal cost of doing business. Ultimately, the Landlord did not elaborate and explain

how many hours the agent spent helping, or what tasks took up which amounts of time. There is very little context provided around how this bill was calculated.

However, I note that I may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal award is more appropriate for this item. I accept the Landlord incurred costs to restore and repair the damage caused by the Tenant but his costs regarding the time spent by his agent were poorly explained and itemized. I award a nominal award of \$300.00.

10) \$3,100.00 – Rent Losses

I accept that the Tenant left, without proper notice, on June 19, 2020. The Tenant breached section 45(1) of the Act by failing to give proper Notice. I accept that she failed to pay June rent, and after accounting for the \$500.00 subsidy from the Government, she still owes \$1,300.00 for June 2020.

Had the Landlord been unable to re-rent the unit due to the Tenant's short Notice, he may have been able to recover the lost rental revenue due to the Tenant's short and improper Notice for July 2020. However, he was able to re-rent, and mitigate his losses. Given he was able to re-rent the unit for July 2020, I find he is not entitled to further compensation for rent for that month. The Landlord will only be granted \$1,300.00 for lost June rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary compensation, as outlined above:

Item	Amount
1. Cleaning fees	\$399.00
2. Parking Pass	\$100.00
3. Couch Cushion - Nominal	\$100.00
4. Fire Watch – Landlord’s Time	\$240.00
7. Cleaning – Landlord’s Time	\$180.00
8. Agent Fees - Nominal	\$300.00
9. Rent – June 2020	\$1,300.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,719.00
LESS: Security Deposit	\$500.00
Total Amount	\$2,219.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$2,219.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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: November 09, 2020

Residential Tenancy Branch