



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL, MNDL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 31, 2020 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- For compensation for damage to the unit or property;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The tenants did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The tenants did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that hearing packages and evidence were sent by registered mail to the tenants’ new address. The Landlord said another tenant told her the tenants’ new address. The Landlord provided Tracking Numbers 1 and 2. I looked these up on the Canada Post website which shows the packages were “delivered to your community mailbox, parcel locker or apt./condo mailbox”. In relation to Tracking Number 2, the Canada Post website shows the recipient was not located at the address and the item was returned.

The Landlord testified that she spoke to the tenants about the hearing and they were aware of it. The Landlord did not point to evidence submitted to support this.

The Landlord testified that she also provided the hearing package and evidence to Tenant R.H.P. in person around October 20, 2020 when he came to get the tenants' mail.

I am not satisfied the registered mail service was sufficient. I am not satisfied the tenants live at the new address provided to the Landlord by a third party. I do not find third-party information about the tenants' new address sufficiently reliable. The Canada Post tracking information does not confirm that the tenants received the packages as it does not show that the packages were delivered to the tenants. Further, the second package was returned because the recipient did not live at the address used.

I am not satisfied the tenants were served in accordance with the *Residential Tenancy Act* (the "Act") and Rules of Procedure (the "Rules") based on the Landlord's verbal testimony that the tenants were aware of the hearing. I do not find this verbal testimony alone sufficient to prove service.

I am satisfied based on the verbal testimony of the Landlord that she provided the hearing package and evidence to Tenant R.H.P. in person around October 20, 2020. Based on this, I am satisfied Tenant R.H.P. was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Act*. I am not satisfied the Landlord complied with rule 3.1 of the Rules in relation to the timing of service. However, I am satisfied Tenant R.H.P. received the hearing package and evidence one month prior to the hearing and I find this to be sufficient notice of the hearing. Pursuant to section 71(2)(b) of the *Act*, I am satisfied Tenant R.H.P. was sufficiently served.

I am not satisfied Tenant T.C. was sufficiently served and therefore I decline to allow the Landlord to proceed against Tenant T.C. and have removed Tenant T.C. from the style of cause.

I proceeded with the hearing in the absence of Tenant R.H.P. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

During the hearing, the Landlord withdrew the request to keep the security deposit.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to compensation for damage to the unit or property?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent	\$17,987.80
2	Unpaid utilities	\$4,410.02
3	Loss of garage fob	\$50.00
4	Two doors	\$500.00
5	Hardwood floor damage	\$1,000.00
6	Damage to kitchen ceiling	\$500.00
7	Damage to ceiling of bedroom and closet	\$100.00
8	Cleaning fee	\$300.00
9	Filing fee for previous file	\$100.00
10	Filing fee	\$100.00
	TOTAL	\$25,047.82

The Landlord had submitted three tenancy agreements. The Landlord testified as follows. The rental property includes three units, the main floor unit, upper unit and coach house. In 2019, the tenants rented the basement unit and then moved to the main floor. In October of 2019, the tenants moved to the coach house. In December of 2019, the tenants moved to the upper unit. Rent changed between each unit. The tenants last lived in the upper unit. Although the tenants moved into the upper unit in December of 2019, they did not sign a tenancy agreement until July 20, 2020.

The Landlord confirmed the Application outlines amounts owing from all three tenancy agreements. As explained to the Landlord during the hearing, the Landlord cannot seek amounts owing from three different tenancies in one Application for Dispute Resolution.

Given this, the Landlord limited the request to the amounts owing from the most recent tenancy agreement.

The most recent written tenancy agreement in evidence shows the following. The tenancy started July 01, 2020 and was for a fixed term ending June 30, 2021. Rent was \$2,000.00 per month due on the first day of each month. The tenants were required to pay a \$550.00 security deposit. The parties signed the agreement. There was an addendum attached.

The addendum states that Tenant R.H.P. owed the Landlord \$18,000.00 in unpaid rent and utilities. It notes that Tenant R.H.P. had lived in the unit since December 01, 2019. It states that Tenant R.H.P. is responsible for 50% of the utilities.

The Landlord confirmed rent was \$2,000.00 per month since December 01, 2019 when the tenants moved into the upper unit.

The Landlord testified that the tenants vacated the rental unit August 08, 2020.

The Landlord testified as follows.

The tenants did not provide a forwarding address.

There was no move-in or move-out inspection done, and the tenants were not offered two opportunities as required to do these.

The only rent payments made by the tenants for the upper unit were \$1,000.00 in June and \$200.00 in May. Given this, \$15,316.13 in rent is outstanding from December of 2019 to August 08, 2020. The tenants did not have authority under the *Act* to withhold rent. Text messages in evidence support her position about unpaid rent.

The tenants owed 50% of the utilities. The tenants owed \$2,986.02 for utilities for the upper unit since December of 2019. The tenants' friend paid \$250.00 towards utilities. Therefore, \$2,736.02 in utilities is currently outstanding.

In relation to the \$50.00 for a garage door fob, the tenants did not give the fob back at the end of the tenancy. She looked on Amazon and the cost to replace the fob is \$50.00.

In relation to the \$500.00 for two doors, this relates to the bathroom and washroom doors. One of the doors was broken and the other was scratched and had holes in it. Photos in evidence show this. She tried to fix the doors but had to buy new ones. She paid cash for the doors. The cost claimed includes labour as she hired someone to install the doors which took five hours.

In relation to the \$1,000.00 for damage to the hardwood floor, the tenants were growing marijuana in the rental unit. There was a water leak due to this. The whole bedroom floor was soaked with water and ruined. The floor has to be replaced. The floor was hardwood and will be replaced with hardwood. The floor was less than a year old. The \$1,000.00 is an estimate of the cost. It cost more than \$1,000.00 for the hardwood and labour when the floor was installed. There are photos submitted of the floor.

In relation to the \$500.00 for damage to the kitchen ceiling, the water leaked into the kitchen. There is a photo of this in evidence. The ceiling was stained. The ceiling has to be repainted. The \$500.00 is based on an estimate she received for the work from someone over the phone.

In relation to the \$100.00 for damage to the ceiling of the bedroom and closet, the tenants cut holes in the wall to the attic. There are photos of this submitted. She is seeking \$100.00 to repair this including patching and painting. The \$100.00 is an estimate that was provided to her.

In relation to the \$300.00 for cleaning, the tenants left garbage in the rental unit and did not clean the rental unit. There are photos showing this in evidence. She hired someone to remove the garbage which cost \$300.00. She spent 10 hours cleaning the rental unit.

The Landlord sought the filing fee for a previous file. I have read the decision for this previous file. The Landlord was already awarded the filing fee in the decision.

The Landlord submitted the following evidence:

- Spreadsheets showing rent and utility amounts owing;
- Text messages;
- E-transfer documentation;
- Photos showing the water leak, bedroom floor, ceiling of the kitchen, broken doors, cuts in the ceiling, garbage left at the rental unit and food left in the fridge; and

- Utility bills.

Analysis

As stated to the Landlord during the hearing, the tenancies for separate units within the rental property for different rent amounts are separate tenancies and the Landlord cannot seek monies owing for all three tenancies on one application for dispute resolution. Therefore, I have only dealt with the monies owing from the most recent tenancy agreement for the upper unit. The remaining claims arising from the prior tenancies are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

All of my findings outlined below are based on the Landlord's undisputed testimony and the documentary evidence submitted. I accept the Landlord's testimony as the tenants did not appear at the hearing to dispute it. Further, I did not have any concerns about the reliability or credibility of the Landlord's testimony. As well, I accept that the Landlord's documentary evidence supports her testimony as the tenants did not appear at the hearing to comment on the documentary evidence or raise an issue with it.

I am satisfied that the most recent tenancy agreement between the parties was for the upper unit and started December 01, 2019. Therefore, I have considered monies owing since December 01, 2019.

#1 Unpaid rent

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants were required to pay \$2,000.00 in rent per month by the first day of each month pursuant to the tenancy agreement. The tenants failed to pay \$15,316.13 in rent from December of 2019 to August 08, 2020. The tenants did not have authority under the *Act* to withhold rent.

The tenants owe the Landlord \$15,316.13 in unpaid rent and I award the Landlord this amount.

I note that I only award the Landlord unpaid rent up until August 08, 2020 as this is the date the tenants vacated. Although the Landlord may have been entitled to loss of rent for August depending on the circumstances, the Landlord applied for unpaid rent and not loss of rent. The tenants were only required to pay rent pursuant to the tenancy agreement while they lived in the rental unit pursuant to sections 26 and 57 of the *Act*.

#2 Unpaid utilities

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants were required to pay 50% of the utilities pursuant to the tenancy agreement. The tenants failed to pay \$2,736.02 in utilities from December of 2019 to August 08, 2020.

The tenants owe the Landlord \$2,736.02 for utilities and I award the Landlord this amount.

#3 Loss of garage fob

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37(2)(b) of the *Act* states:

(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.

I find the following based on the undisputed testimony of the Landlord.

The tenants did not return the garage fob at the end of the tenancy. The cost to replace the fob is \$50.00.

I am satisfied the tenants breached section 37(2)(b) of the *Act*. I am satisfied the Landlord must replace the fob and that this will cost \$50.00. I find this amount reasonable and award the Landlord \$50.00.

#4 Two doors

Section 7 of the *Act* and Policy Guideline 16 apply to this item as well.

Section 37(2)(a) of the *Act* states:

(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 find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants broke or damaged two doors in the rental unit. The Landlord tried to fix the doors but had to buy new ones. The cost of new doors and the labour to install them was \$500.00.

I am satisfied the tenants breached section 37(2)(a) of the *Act*. The damage to the doors as shown in the photos is beyond reasonable wear and tear. I am satisfied the Landlord had to replace the two doors and have someone attend to install them. I am satisfied this cost \$500.00. I find this amount reasonable and note that the tenants did not appear to dispute this amount. I award the Landlord this amount.

#5 Hardwood floor damage

Sections 7 and 37(2)(a) as well as Policy Guideline 16 apply to this item as well.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants caused a water leak in the rental unit which ruined the bedroom floor. The floor was hardwood and has to be replaced. The floor was less than a year old. Replacing the floor will cost more than \$1,000.00.

I am satisfied the tenants breached section 37(2)(a) of the *Act* as causing a water leak and the resulting damage as shown in the photos is beyond reasonable wear and tear. I am satisfied the Landlord has to replace the hardwood floor. I am satisfied this will cost more than \$1,000.00 for materials and labour. I find this amount reasonable and note that the tenants did not appear to dispute this amount. I award the Landlord this amount.

#6 Damage to kitchen ceiling

Sections 7 and 37(2)(a) as well as Policy Guideline 16 apply to this item as well.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants caused a water leak in the rental unit which caused damage to the kitchen ceiling. The ceiling must be repaired which will cost \$500.00.

I am satisfied the tenants breached section 37(2)(a) of the *Act* as causing a water leak and the resulting damage as shown in the photos is beyond reasonable wear and tear. I am satisfied the Landlord must have the kitchen ceiling repaired. I am satisfied this will cost \$500.00. I find this amount reasonable and note that the tenants did not appear to dispute this amount. I award the Landlord this amount.

#7 Damage to ceiling of bedroom and closet

Sections 7 and 37(2)(a) as well as Policy Guideline 16 apply to this item as well.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants cut holes in the wall to the attic. This must be repaired which will cost \$100.00 for patching and painting.

I am satisfied the tenants breached section 37(2)(a) of the *Act* as the damage described and shown in the photos is beyond reasonable wear and tear. I am satisfied the Landlord must repair the damage. I am satisfied this will cost \$100.00. I find this amount reasonable. I award the Landlord this amount.

#8 Cleaning fee

Sections 7 and 37(2)(a) as well as Policy Guideline 16 apply to this item as well.

I find the following based on the undisputed testimony of the Landlord and documentary evidence submitted.

The tenants left garbage in the rental unit and did not clean the rental unit. The Landlord had to hire someone to remove the garbage which cost \$300.00. The Landlord had to spend 10 hours cleaning the rental unit.

I am satisfied the tenants breached section 37(2)(a) of the *Act* given the state of the rental unit at the end of the tenancy as shown in the photos. I am satisfied the Landlord had to hire someone to remove the garbage. I am also satisfied the Landlord had to clean the rental unit. I am satisfied it cost \$300.00 to have someone remove the garbage. I find this amount more than reasonable given the items left in the rental unit as shown in the photos. I award the Landlord this amount.

#9 Filing fee for previous file

The Landlord is not entitled to the filing fee for the previous file as the Landlord was already awarded the filing fee in the decision. Further, I do not accept that parties are entitled to seek filing fees for different files in an Application for Dispute Resolution as the filing fee should be dealt with on that file, not on a different file.

#10 Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Unpaid rent	\$15,316.13
2	Unpaid utilities	\$2,736.02
3	Loss of garage fob	\$50.00
4	Two doors	\$500.00

5	Hardwood floor damage	\$1,000.00
6	Damage to kitchen ceiling	\$500.00
7	Damage to ceiling of bedroom and closet	\$100.00
8	Cleaning fee	\$300.00
9	Filing fee for previous file	-
10	Filing fee	\$100.00
	TOTAL	\$20,602.15

The Landlord is issued a Monetary Order for \$20,602.15 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$20,602.15 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 03, 2020

Residential Tenancy Branch