



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

The landlord filed an Application for Dispute Resolution (the “Application”) on September 10, 2020 seeking an order to recover monetary loss for unpaid rent, damages, and compensation for other money owed by the tenant. Additionally, the landlord applied for reimbursement of the \$100 Application filing fee.

The matter proceeded by way of a hearing on December 22, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenants did not attend. The tenants did not submit or serve documents as evidence for this hearing.

In the hearing, the landlord provided that they delivered notice of this hearing to the tenants. They did so by registered mail, to a forwarding address they received from the tenants soon after their Application was filed.

In consideration of this testimony presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenants were sufficiently served with notice of this hearing, as well as the landlord’s prepared evidence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent, damages, or other money owed, pursuant to section 67 of the *Act*?

- Is the landlord entitled to apply the security deposit against any amounts owing, pursuant to section 72 of the *Act*?
- Is the landlord entitled to reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlord and one of the tenants signed an initial agreement on October 1, 2019 for the tenancy starting on October 15. The rent amount was \$1,545 payable on the 1st of each month. The tenant paid a security deposit of \$772.50.

A second tenant signed a new agreement with the parties on March 17, 2020. This tenancy began on April 1, 2020 on a month-to-month basis. The security deposit amount carried over, and the rent increased to \$1,595.

The tenants gave a notice to the landlord via email correspondence in August 2020. On August 1 they paid no rent, then by August 5 they proposed to the landlord a partial payment, with completion by August 15th. By August 15th, the tenants messaged the landlord to state they could not pay the rent at all, and that they would be moving out by September 1. A copy of this email is in the landlord's evidence. The landlord received no formal written notice, and no rent for the month of August 2020.

The landlord contacted the tenants on September 2, and they advised they had moved out. The landlord visited to do a walk-through of the rental unit, and tried to schedule a walk-through inspection meeting, making "two or three attempts" to schedule. The landlord provided copies of these email messages to the tenants in their evidence materials.

The landlord stated that the unit was "brand new" when the first tenant began the tenancy in October 15, 2019. By the end of the tenancy, the unit had been "pretty worked over" in the landlord's description in the hearing.

The landlord completed a 'Monetary Order Worksheet' dated September 18, 2020 in preparation for this hearing. It lists the following pieces of their monetary claim:

#	Item(s)	\$ amount
1	damage repairs	2,168.25
2	cleaning	275.00
3	August 2020 rent	1,595.00

4	September 2020 rent	797.50
5	fob not returned	60.00
6	Application fee	100.00
Total		4,995.75

The amount of rent owing for September 2020 is one-half month rent. Another tenancy began by mid-September. The landlord also applied to use the withheld security deposit amount of \$772.50 toward the calculated total amount.

The landlord provided photos showing damage throughout the rental unit and submitted receipts from the contractor showing work completed, and materials and labour costs. In the hearing, the landlord stated the receipt comprehensively shows all of the work needed, essentially summing up all of the damage left in the unit.

A receipt from a cleaning company is dated September 11, 2020.

The landlord provided a copy of the 'Statement of Accounts' dated Oct 31 from a credit union to show there was no rent paid for the month of August 2020. They also provided a cheque post-dated to "2020-09-01" to show this amount was not paid for the September rent.

The landlord provided a copy of an email dated September 10, 2020 from a property manager. The property manager/administration assistance advised that a new fob costs \$60.

The tenant did not attend the hearing and did not provide documentary evidence prior to the hearing date.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific term of the rental amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

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 sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss 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 *Act* section 26 sets out the duty of a tenant to pay rent:

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.

I accept the evidence before me that the tenant left the unit without paying the August rent amount. I so award compensation for the rent amount of \$1,595. The lack of proper notice from the tenants, to advise of the end of tenancy, is a breach of section 45(1) of the *Act*. The landlord has mitigated their damages by claiming only one-half of that month's rent, for the first half of September. I so award compensation to the landlord for the one-half September rent, \$797.50.

I find the evidence shows that damage throughout the rental unit was due to the actions of the tenants. Similarly, from the photo evidence I find the cleaning service costs was warranted. The landlord presented these costs in the receipts. These are recoverable damages to be paid to the landlord.

In each of the portion of the compensation claims above, in summary I find the landlord meets all four criteria of the four-part test.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$4,995.75, including the \$100 Application filing fee. After setting off the \$772.50 security deposit, there is a balance of \$4,223.25. I am authorizing the landlord to keep the security deposit amount and award the balance of \$4,223.25 as compensation to them.

Conclusion

Pursuant to section 67 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,223.25. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 24, 2020

Residential Tenancy Branch