



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on October 17, 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”). 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 conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

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. The landlord in the hearing confirmed the material was delivered because they saw certain of the content copied to a public forum online by the tenants.

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 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 the tenants signed the initial agreement on September 16, 2019 for the tenancy starting on September 20, 2019. The agreement specifies it was a fixed-term tenancy to end on September 20, 2020. The indication is that the tenants “must vacate” at the end of this fixed term, with the reason given for “owner occupation”.

The rent amount was \$2,250 payable on the 1st of each month. The agreement shows the tenants paid a security deposit amount \$1,125 and a pet damage deposit of \$150; however, the landlord provided in the hearing that the cheques the tenants provided for this (images in the evidence) did not clear after the end of the tenancy.

The landlord provided that the tenancy effectively ended with the tenants abandoning the unit on September 18, 2020. They did not have contact with the tenants from that point onwards. The tenancy formally ended with the landlord obtaining an order of possession through a prior dispute resolution process, effective October 23, 2020. This stemmed from the landlord serving a Notice to End Tenancy for unpaid rent for the month of September 2020.

The landlord provided a copy of their text message to the tenant on September 2, 2020, requesting rent payment for that month. On their Application, the landlord provided that they received no rent for that month; therefore, they claim the full amount of September 2020 rent for \$2,250.

The landlord claimed for reimbursement of rent amounts owing for October, November and December after this because “the tenant never provided proper notice to end the tenancy.” At the time of their Application on October 17, 2020, the landlord noted “the rental unit remains empty, without income, due to the tenant’s refusal to pay rent. . .” In the hearing they presented that they had a “fair bit of work to make the unit habitable, then put the unit up for sale”, then selling the unit in December 2020. The landlord’s total claim for this portion is \$6,750, for three months’ rent at \$2,250 each.

The landlord provided a copy of a Condition Inspection Report, completed at the start of the tenancy. The copy has the signature of the landlord and one of the tenants. The tenant signed and provided their name to indicate they “agree that this report fairly represents the condition of the unit.” The document was not completed for the end of the tenancy.

The landlord provided copies of their offers to the tenants for a move-out inspection of the rental unit. There are five separate consecutive dated documents addressed to the tenants. The final document dated September 25, 2020 bears the landlord's notation in the evidence copy: "On this day, we declared the unit to be abandoned as they did not attend for inspection."

They also provided a copy of the same Condition Inspection Report, updated at the end of the tenancy. This was without the tenants' participation and the document was not signed by the tenants. This document contains the summary: "replacement of carpet, repair & repainting of walls, professional cleaning of bathrooms."

The landlord presented a document they entitled "Testimonial" dated October 14, 2020 which is the account of a third party who is a real estate agent. With experience in matters of listing properties and establishing units for presentations on sales, this third party gave an account of their direct observations of the state of the rental unit. They described various details of the rooms in the rental unit, and stated they were "overwhelmed with how it was left." They prescribed carpet replacement, and "all the walls, doors and wood trim also need to be painted." The level of cleaning needed led them to recommend two visits from "the carpet guys and painters." This third party compared their current observations of the rental unit to what they observed when the landlord was going to begin renting, prior to this tenancy commencing.

The landlord provided a set of 27 photos showing damage or uncleanliness in the unit. On their Application, and description of damage, the landlord provided that:

- the carpets. . .were stained in several places and pulled up completely in one spot." with pet urination
- window coverings and shelving units were pulled out of the walls leaving "significant damage"
- repainting from wall damage, "as well as numerous dents and gouges not consistent with normal wear and tear"
- the unit overall was unclean and unsanitary, requiring professional cleaning service, particularly in the bathrooms
- damage to kitchen counter, kitchen flooring, repair of sinks and faucets, light fixtures and light switches

The landlord compiled their expenses for damages and provided a Monetary Order Worksheet dated October 14, 2020 that sets out these amounts as follows:

#	Item(s)	\$ amount
1	replacement carpet	1,922.45
2	carpet installation	867.30
3	professional cleaning	501.99
4	paint labour	3,700.00
5	paint	473.80
6	miscellaneous repairs	360.00
7	mailbox key replacement	50.00
6	garbage disposal	27.00
Total		7,902.54

The landlord provided copies of receipts for each of the above items. All transactions show dates from September 23 onwards.

On December 4, 2020 the landlord added a secondary Monetary Order Worksheet giving the total amount for \$52.87. This is for registered mail and “photo evidence production.”

The above three amounts – rent owing, prospective rent owing and damages – comes to the total \$16,902.54. This amount does not include the \$100 Application filing fee.

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 September rent amount. The non-payment of rent by the tenants is a breach of section 27 of the *Act* as well as a breach of the payment of rent set out in the tenancy agreement. Beyond the fixed-term end date of September 20, and onwards the September 25, the landlord did not know whether the tenants had moved out or not. I so award compensation for the rent amount of \$2,250.

To address the landlord's claim for the following months' rent for October, November and December, I note the fixed term tenancy agreement ended on September 20, 2020. The tenant's monthly rental obligation ended in September. There was no provision in the tenancy agreement for continuance on a month-to-month basis; I find the agreement was firm on the September 20 end date.

The *Act* section 44(b) provides that a tenancy may end where "the tenancy agreement is a fixed term tenancy agreement that . . . requires the tenant to vacate the rental unit at the end of the term". I separate this from the requirement set in section 44(1), which then refers to section 45(2)(a): these set out circumstances where a tenant wishes to end the fixed-term tenancy on their own notice, where there is no requirement for the tenant to vacate at the end of term.

In summary on this point, the legislation does not prescribe that a tenant must notify of the end of tenancy where a vacancy clause is built into the tenancy agreement, as it is here. This is not the basis for a claim of lost rental income.

For the landlord's claim of lost rental income, the landlord did not present that they made re-renting the unit a top priority. A mitigating move in this regard would be re-advertising the unit for new tenants as soon as possible after the end of this tenancy. There is no evidence the landlord had this goal in mind. The third party's testimonial provided by the landlord has it that ". . .we were in no position to even begin thinking about selling this home."

Further, the tenancy agreement itself specifies that the tenants must vacate at the end of the fixed term. The reason provided is for the landlord's own occupancy. The landlord in the hearing stated that the "unit was sitting empty not generating any revenue." Any change in the design from their own occupancy to another prospect for rental income is not explained in the evidence.

In the hearing, the landlord stated their focus was "to make the unit habitable, then put the unit up for sale", eventually selling the unit in December 2020. I find the landlord's focus here was not re-renting the unit, and this claim for a loss of rental income is not tied back to any breach by the tenants here.

For these reasons, I make no award to the landlord for this portion of their claim.

The *Act* section 32 provides that a tenant must repair damage to the rental caused by the actions or neglect of the tenant. This is beyond reasonable wear and tear.

I find the evidence shows that damage throughout the rental unit was due to the actions of the tenants. From the photo evidence I find the cleaning service costs were warranted; from the Condition Inspection Report I find it reliable evidence in that it gives details from the landlord's perspective immediately at the end of the tenancy. The landlord presented these costs in the receipts. These are recoverable damages to be paid to the landlord.

One exception is the extensive cost of repainting. I am not satisfied based on the photos presented of the need for entire unit repainting, beyond those areas shown in the photos which show damage to the painted surfaces caused by the tenants. This is with reference to the Condition Inspection Report. I award \$1,850 and \$200 for the cost of labour and paint. This is approximately half of what the landlord claims for this amount based on what is presented in the provided photos.

I so award the amount of \$5,778.74. This portion awarded reflects my finding that the damage here is due to deliberate damage or neglect by the tenant.

The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail and photo production is not recoverable.

Because they are successful in this claim I order recompense of the \$100 Application filing fee to the landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$8,128.74. 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: February 3, 2021

Residential Tenancy Branch