



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on November 24, 2020 seeking an order to recover the money for unpaid rent, an order for compensation for damage to the rental unit, and other money owed. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 19, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

An agent for the landlord (hereinafter the “landlord”) attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

An Adjudicator from the Residential Tenancy Branch allowed the landlord to serve Notice of Dispute Resolution Proceeding to the tenant via substituted service. This was based on the landlord’s application to serve information to the tenant via email. The Adjudicator allowed this in their decision dated December 3, 2020.

In the hearing the landlord provided that they used this tenant email address to serve Notice of this hearing as well as their prepared evidence. Based on the submissions of the landlord, as well as the prior decision in this matter, I accept that the landlord served notice of this hearing and their evidence in a manner complying with s. 89(1)(e) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent, and/or compensation for damage, and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on August 19, 2018. The monthly rental amount of \$2,000 increased to \$2,050 by the time of the end of tenancy. The rent was payable on the 1st of each month. The tenant paid an initial security deposit of \$1,000. An Addendum to the agreement provides a list showing “What NOT to throw down the drain”.

The landlord provided that the security deposit was utilized in a previous monetary order granting an award to the tenant. In reference to this, the landlord gave the detail that a prior separate monetary order granted compensation to the landlord for rent the tenant did not pay throughout 2020.

The landlord provided background in the hearing about how the tenancy ended. This involved the hiring of bailiffs over a protracted period from November 18, 2020 through to November 24. This was at significant cost, as outlined below.

After the eviction on November 24, 2020, the landlord inspected the rental unit without the tenant present. This inspection is documented in a report from the agent dated November 24, 2020. This lists multiple items for cleaning, drain clearing, painting, and debris present. This is supplemented with 104 photos provided by the landlord showing space on that date, in every room of the rental unit.

The landlord completed a monetary order worksheet dated February 28, 2021. This is an itemized list of expenses and losses.

The landlord claimed the month of November's rent amount, for \$2,050, along with the \$25 late fee., totalling \$2,075. This late fee is set out in clause 8 of the tenancy agreement.

The landlord retained bailiff services to remove the tenant. This became protracted when the tenant advised the bailiffs that they had "an order to stay". On November 18, the tenant advised they would be attending court, and the bailiffs so advised the landlord of this at that time. The landlord in the hearing described the bailiffs' need to return to the rental unit approximately one week later after the court process concluded with the landlord's participation. Additionally, the bailiffs assisted in preparing storage space for the tenant's own belongings, later retrieved by the tenant. The cost of the moving and storage significantly added to the invoiced amount from the bailiff services. In total this invoice amount from bailiff services is \$4,571.90. A "client ledger" accompanies the invoice and shows all actions and disbursement amounts.

For their own time in dealing with the protracted eviction process, the landlord's agent charged their own services back to the landlord. This is the amount of \$5,512.50. In the hearing, the landlord's agent spoke to their own need to attend court hearings in this matter and this involved considerable time and effort. For this, and all the other work that ending the tenancy entailed, they registered 30 hours of work, at \$175 per hour.

The landlord's agent provided painting services. As shown in the provided receipt, this amount is \$1,596. This is for materials and labour on December 5, 2020 after the move out on November 24, 2020. In the hearing, the landlord referred to the photos taken, and the condition inspection report completed on the day of move out.

Similarly, the landlord presented that there was a need for carpet cleaning and other cleaning. The provided invoice shows the work undertaken on November 27, 2020, for \$370.13. This is shown as 3.5 hours of work.

The landlord also retained a locksmith to change the locks of the rental unit on November 24, 2020 after the tenant's move out. A provided receipt dated November 24, 2020 shows the amount of \$197.40.

The landlord also claims \$181 total for court fees. This is for attendance at court on November 18 and November 23, as a result of the tenant attempting to challenge the order of possession in this matter at two different registries within a very short amount of time. On their Application, the landlord describes these as "frivolous and vexatious court actions to delay writ of possession."

Adding a \$100.00 Application filing fee for this hearing, the total amount of the landlord's claim is **\$14,603.93**.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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.

As set out above, the landlord's worksheet identifies primarily two separate kinds of costs: those associated with the eviction; and those for cleaning and damage repair. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

For each amount presented, I find the landlord has verified the amount in question and provided proof that the amount owing is in relation to the tenancy. As a result, I find the total amount of \$14,503.93 in full is that owing from the tenant to the landlord. I make the award for this full amount to the landlord.

I amend the landlord's Application to exclude their request to apply the security deposit against this amount. As stated in the hearing, a prior compensation award factored in the security deposit so I make no decision involving that amount.

Because the landlord was successful in this Application, I award the amount of the Application filing fee to them.

Conclusion

Pursuant to ss. 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$14,603.93 for compensation set out above and the recovery of the filing fee for this hearing application. 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 s. 9.1(1) of the *Act*.

Dated: March 19, 2021

Residential Tenancy Branch