



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$5,000.00; a monetary order for damages for the Landlord of \$1,500.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 45 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Landlord testified that she served the Tenant with her Notice of Hearing documents and evidence by email, sent on November 20, 2020. The Landlord had successfully applied for an order for substituted service, allowing her to serve the Notice of Hearing documents and evidentiary submissions on the Tenant via email. The Landlord said that the Tenant would not give her a forwarding address at the end of the tenancy. In her

application for substituted service, the Landlord established for the adjudicator that she had regular email contact with the Tenant at the email address provided, and therefore, that the Tenant's email address is currently active. The adjudicator determined that it is reasonable to expect that the Tenant will receive documents served to this email address.

I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord confirmed her email address, and provided the Tenant's email address at the outset of the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before she testified, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to Recovery of the Application Filing Fee?

Background and Evidence

The Landlord said that the Tenant rented the whole house on five acres, as well as a barn. She said that the house was approximately 45 years old, but that it was last renovated in about 2012.

The Landlord submitted a copy of the Parties' tenancy agreement, and confirmed that the fixed-term tenancy began on April 1, 2014, with a monthly rent of \$1,800.00, due on the first day of each month. The Landlord said that the rent at the end of the tenancy was \$2,700.00 per month. The Landlord said that the Tenant paid the Landlord a security deposit of \$900.00, and no pet damage deposit, and she said that she still held the security deposit to apply against any awards from these claims. The Landlord said that the Tenant moved out on January 31, 2020, and that he did not give her his forwarding address.

Unpaid Rent → \$5,000.00

The Landlord said that the Tenant failed to pay rent for December 2019 and for January 2020; she said he told her that he did not have any money. The Landlord said that the Tenant sent her \$400.00 in October 2020, so instead of owing her \$5,400.00 in outstanding rent, he only owes her \$5,000.00.

Damage to Property → \$1,500.00

The Landlord said that the Tenant also owes her compensation for damage done to the residential property. She said that someone drove into one side of the front gates at the entrance to the driveway. She said the other side is functional. The Landlord said:

I called a guy who can give me quotes for fixing the gate, and they said aluminum gates costs \$1500, so that's why I charged only \$1000, because it is an old gate. They have to replace both sides, and they can't straighten it out.

The Landlord said that it is hard to tell how old the gate is, because it was there when she purchased the property in 2007. She went on to say:

I called four or five different places. The last guy said they can't do aluminum. because it's too expensive to fix it. They can't straighten it out, as they will damage it more, which was the consistent message from everyone.

I didn't get it replaced; it's still damaged. We decided to charge him only a thousand. At this point we have left it the way it is. We will replace it when he pays us, because it is expensive.

The Landlord submitted three photographs showing a black, metal gate that is curved in on one side. The Landlord said: "We're having hardship, so to replace the gate would be hardship, because of Covid. But if we have to, we could probably replace the gate. But he hasn't paid rent and with Covid I haven't worked, so . . ."

The Landlord also said the Tenant caused damage to the sliding glass door. She said:

One pane was shattered completely. You can see from the photographs that the doors are missing one pane of glass. They said a rock hit it or something, and it shattered. We have not had that replaced, either. We didn't realize that it had to be updated for this time. We're in the process of getting quotes, and with Covid that limits bringing people in.

The Landlord said that she did not have any estimates for this, and that “you can’t just replace a pane; you would have to replace the full sliding doors, and we were looking at sliding doors from [a major hardware retailer]. We were going to – my husband would put it in, if need be. We are trying to be conservative.” The Landlord requested compensation of \$500.00. She said that she did not know how old the sliding doors were, but that they were probably there since the house was built.

Other Costs Incurred → \$900.00

In her monetary order worksheet, the Landlord also listed “other damages (will be covered by withheld Damage Deposit)”, however, she did not indicate what that damage was or how much repairs cost. The Landlord said:

We used the \$900.00 of the security deposit for cleaning and damages to the drywall and to the blind and to the floor. We’ve talked to him about it, and we said we were keeping it. There’s a lot of supporting evidence to show the state of the house he left it at. That’s why we took so many pictures. It took me two days to clean the house. There was a lot of drywall damage, holes in the wall, scratched, broken blinds. It says in the contract that they received new blinds. When we listed them all, it came to at least that much.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Unpaid Rent → \$5,000.00

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the undisputed evidence before me in this matter, I award the Landlord with **\$5,000.00** for outstanding rent owing by the Tenant to the Landlord for December 2019 and January 2020.

Damage to Property → \$1,500.00

Before the Landlord testified about her damage claims, I advised her on how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

The Landlord testified that she has not had the items in this claim repaired, and that she supplied only estimates. As a result, I find that the Landlord has provided insufficient evidence to demonstrate that she has suffered a loss. As claims are for incurred costs, I find that the Landlord was premature in applying for compensation for these items. Therefore, I dismiss the items in this claim, with leave to reapply. However, this is not an extension of any statutory time limit.

Other Costs Incurred → \$900.00

The Landlord said that there was other damage resulting from this tenancy, including replacing blinds and the need for the Landlord to clean the rental unit for two days straight. However, the Landlord did not submit any receipts or bills to prove the costs incurred. Further the Landlord did not specifically apply for compensation in this regard, and therefore, the Tenant did not have sufficient notice of these claims. As a result, I find that the Landlord failed to provide sufficient evidence to prove the value of these claims, and therefore, I dismiss this without leave to reapply.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit of \$900.00 in partial satisfaction of the Landlord’s monetary claim.

The Landlord is partially successful in her claim from the Tenant in the amount of

\$5,000.00 for recovery of unpaid rent, pursuant to sections 26 and 67 of the Act. The Landlord's other claims are dismissed with and without leave to reapply, depending on the circumstances noted above.

As the Landlord is partially successful in her Application, I also award her with recovery of the **\$100.00** Application filing fee pursuant to section 72 for a total monetary award of **\$5,100.00**.

The Landlord is authorized to retain the Tenant's \$900.00 security deposit in partial satisfaction of the awards. I grant the Landlord a Monetary Order for the remainder of the awards owing in the amount of **\$4,200.00**.

Conclusion

The Landlord is partially successful in her Application for compensation from the Tenant in the amount of \$5,000.00 in unpaid rent owing by the Tenant. The Landlord is also awarded recovery of the \$100.00 Application filing fee. The Landlord's other claims are dismissed with and without leave to reapply, based on the circumstances noted above.

The Landlord is authorized to retain the Tenant's \$900.00 security deposit in partial satisfaction of the monetary awards. The Landlord is granted a Monetary Order of **\$4,200.00** for the remainder of the awards owing.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 05, 2021

Residential Tenancy Branch