



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Energy Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by property manager KR (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties expressly affirmed they understand it is prohibited to record this hearing.

The landlord affirmed she served the notice of hearing and the evidence (the materials) by registered mail. The tenant confirmed receipt of the materials and did not raise any issues with service. I accept the landlord served the materials in accordance with section 89 of the Act.

The tenant stated he did not serve his responsive evidence. Per Rule of Procedure 3.15, I excluded the tenant's evidence.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?

2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy for the period of August 01, 2020 to August 31, 2021. Monthly rent was \$900.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$450.00 was collected and the landlord holds it in trust. A move-in condition inspection report was completed on August 1, 2020. The tenancy agreement and inspection report were submitted into evidence.

On November 07, 2020 the landlord took possession of the rental unit and completed a move-out inspection of the rental unit without the tenant.

The tenant provided his forwarding address in writing to the landlord on November 19, 2020. The landlord filed this application on December 04, 2020.

The tenant stated he did not pay \$900.00 for November 2020 rent. The landlord is claiming for this loss.

The tenant affirmed he was the victim of a home invasion on October 26, 2020. He was assaulted during the invasion, the rental unit was vandalized, his belongings and the rental unit's keys were stolen and he was hospitalized for four days. The police instructed the tenant not to return to the rental unit and he moved to his parents house after he left the hospital.

The landlord testified the tenant's father informed her on October 26, 2020 about the home invasion. The landlord offered to secure the rental unit but the tenant's father affirmed he would do this. The tenant said he was not aware the landlord offered to secure the rental unit and the October 26, 2020 conversation between his father and the landlord was about rent payment.

On November 07, 2020 the tenant emailed the landlord to advise he would not return to the rental unit. The landlord went to the rental unit the same day. The police attended and removed unknown occupants. The landlord completed a move-out inspection report without the tenant because the tenant had informed her in writing he would not return to the rental unit.

The move out inspection report states the rental unit was dirty, the bathroom and the 2nd bedroom walls need to be painted, the shower was damaged and needs repairs, "dirty bath", the exhaust fan needs to be replaced and the 2nd bedroom lights need to be replaced.

The landlord submitted into evidence 27 photographs taken on November 07, 2020 showing spoiled food, dirty bathroom and kitchen, damaged bathtub, drug paraphernalia, blood stains, and garbage.

The landlord submitted an invoice to prove she paid \$779.25 for deep cleaning the 2-bedroom, 800 square feet rental unit, to remove the tenant's belongings and transport them to the landfill.

The landlord repaired the 2nd bedroom light fixture and painted the walls. The landlord repaired the bathroom air vents and bathtub and painted the bathroom walls. The landlord provided a written estimate of \$2,392.75 to substantiate the value of these repairs.

The tenant affirmed the bathroom wall was damaged when the tenancy started and he noticed this damage a few days after he moved in. Later the tenant affirmed he only noticed this damage in early October 2020 and he did not notify the landlord.

The landlord submitted into evidence a monetary order worksheet. The total amount the landlord is claiming for damages is \$4,072.00.

Analysis

Section 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Based on both parties undisputed testimony and the tenancy agreement, I find the parties had a fixed-term tenancy agreement from August 01, 2020 to August 31, 2021 and rent of \$900.00 was due on November 1, 2020.

The tenant admits to not paying November rent. Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, and **I award the landlord \$900.00 for unpaid rent.**

I accept the landlord's testimony that she entered the rental unit on November 7, 2020 to inspect and take possession of the rental unit because this is when she learned the tenant had abandoned the rental unit. I find the tenancy ended pursuant to section 44(1)(d) of the Act on November 07, 2020 because the tenant abandoned the rental unit.

I accept the landlord's testimony that she believed the tenant would not attend a move-out inspection when he notified her in writing on November 7, 2020 he would not return to the rental unit. Section 35(5)(b) of the Act allows the landlord to complete and sign a move-out inspection report without the tenant when the tenant has abandoned the unit and I accept the accuracy of the report.

Section 37(2)(a) of the Act states: "When a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear."

Based on the inspection reports, the 27 photographs, the detailed and convincing landlord's testimony and the invoice, I find the tenant breached section 37(2)(a) of the Act by not cleaning the rental unit at the end of the tenancy. The landlord has proven the value of their loss from this breach with written estimates and **I award the landlord \$779.25 for cleaning expenses and removal of the tenant's belongings.**

Section 32(2)(c) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

The tenant claims there was damage in the bathroom at the start of the tenancy. The tenant's testimony was vague. First the tenant affirmed he noticed the bathroom wall damage a few days after the tenancy started. Later he corrected his testimony to 'early October.' Section 21 of the Residential Tenancy Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the tenant's testimony does not outweigh the evidentiary value of the move-in condition inspection report he signed on August 1, 2020.

Based on the landlord's detailed and convincing testimony, the condition inspection reports, the 27 photographs and the quotations for repairs, I find there was damage to the rental unit during the tenancy due to the tenant's actions and the tenant failed to repair the damage as required by the Act. The landlord has proven the value of the loss from this breach with a written estimate and **I award the landlord \$2,392.75 in compensation for the 2nd bedroom and bathroom repairs.**

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on November 19, 2020. The landlord brought an application for dispute resolution on December 04, 2020, within the timeframe section of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. **I order the landlord to retain the \$450.00 security deposit in partial satisfaction of the total monetary award.**

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
November 2020 rent	900.00
Cleaning expenses	779.25
2 nd Bedroom and bathroom repairs	2,392.75
Filing fee	100.00
Subtotal	4,172.00
Deposit (subtract)	450.00
Total	3,722.00

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$450.00 deposit and grant the landlord a monetary order in the amount of \$3,722.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 *Residential Tenancy Act*.

Dated: April 07, 2021

Residential Tenancy Branch