



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord's agent (the landlord) served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 29, 2020. The tenant disputed that he was not served. The landlord referred to the submitted documentary evidence a copy of the Canada Post Customer Receipt and Tracking label (detailed on the cover of this decision). As service was in dispute a review of the Canada Post website's online tracking history shows that Canada Post received the package for processing on December 29, 2020; the package went out for service on January 4, 2021 and a notice card was left for the tenant to pick up the package; the package went out for service on January 9, 2021 and a final notice was left for the tenant to pick up the package; on January 28, 2021 the package was processed by Canada Post as "unclaimed" and returned to the sender; the package was successfully returned to the sender on February 4, 2021. The tenant confirmed that no

documentary evidence was submitted. Both parties confirmed the tenant's address listed on the application for dispute as correct.

I accept the testimony of both parties and find on a balance of probabilities that the tenant was properly served as per sections 88 and 89 of the Act. Despite not receiving the package the tenant is deemed served as per section 90 of the Act.

During the hearing the landlord clarified that they had submitted an updated monetary order worksheet decreasing the monetary claim to \$1,960.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2020 on a fixed term tenancy ending on July 31, 2021 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 29, 2020. The monthly rent was \$1,580.00 payable on the 1st day of each month. A security deposit of \$822.50 was paid.

The landlord seeks an updated monetary claim of \$1,960.00 which consists of:

\$1,580.00	Unpaid Rent, December 2020
\$300.00	Cleaning/Damage Costs
\$80.00	Junk Removal

The landlord provided affirmed testimony that the tenant vacated the rental unit on November 27, 2020 without notice prematurely ending the fixed term tenancy. The landlord seeks the loss of rental income for December 2020 as it was not possible to re-rent the unit in time for December 2020. The tenant provided testimony confirming that he did end the tenancy on November 27, 2020 due to personal health issues.

The landlord stated that a condition inspection report was conducted without the tenant and the rental unit was found to have a broken door lock which cost the landlord

\$120.00 as per the submitted copy of the signed tenancy agreement, schedule "C" where it list the door lock replacement price. The tenant argued that the door lock was broken when he began his tenancy. The landlord disputes this referring to the completed condition inspection report dated July 30, 2020 and referred to "General" for Locks/Dead Bolt/Peephole listed as in good condition.

The landlord seeks \$100.00 for the cost of replacing the damaged vinyl flooring for the deck. The landlord stated that at the end of tenancy it was found damaged which required repair. The landlord referred again to the submitted copy of the signed tenancy agreement, schedule "C" where it list the damaged or missing balcony at \$100.00 per linear foot. The tenant accepted this portion of the claim but stated that he barely used the deck and did not remember damaging it.

The landlord seeks \$80.00 for cleaning costs. The landlord stated that the rental unit was left dirty requiring cleaning. The tenant disputed this claim. The landlord referred to the condition inspection report for the move-out completed on November 30, 2020 by the landlord which refers to cleaning being required for the kitchen, bathroom, dining/living room floor and the bedroom floor needing cleaning. The landlord stated the removal of items took approximately 3 hours as listed on the condition inspection report for the move-out. The landlord relies upon schedule "C" of the signed tenancy agreement which provides for the agreed upon rate for work. A review of schedule "C" shows a rate of \$25.00 per hour.

The landlord seeks \$80.00 for junk removal. The landlord stated that the rental unit was left "with lots of stuff left behind". The tenant disputed this claim and stated that he did not leave any junk. The tenant stated that he had left a brand new bed worth \$1200.00, a table, a television, some plates and some other small items. The landlord stated the removal of items took approximately 2 hours as listed on the condition inspection report for the move-out at \$40.00 per hour(minimum). I note for the record that a review of schedule "C" from the signed tenancy agreement shows a rate of \$25.00 per hour.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the testimony of both parties and find on a balance on a balance of probabilities that the landlord has established a claim for loss of rental income due to the tenant failing to provide proper 1 months notice to end tenancy. Both parties confirmed the tenant provided notice and vacated the rental unit on November 27, 2020. I find that the landlord has established a claim for loss of rent for December 2020 of \$1,580.00.

I also find that the landlord has provided sufficient evidence to satisfy me that the apartment door lock was broken; the balcony vinyl flooring was damaged was required at the end of tenancy causing the landlord to incur an expense of \$120.00 and \$100.00 as specified in schedule "C" of the signed tenancy agreement. I make this finding despite the tenant's dispute that the lock was already broken at the start of tenancy. The landlord submitted a copy of the completed condition inspection report for the move-in which shows the lock as in a "good" condition.

I find that the landlord's claim for cleaning and junk removal to be successful, however, a review the signed tenancy agreement in schedule "C" refers to a \$25.00 per hour charge for any cleaning and or removal of items. I also note as per the condition inspection report for the move-out completed by the landlord only shows a \$40.00 per hour charge with a \$40.00 minimum. I find that with out further evidence from either party and no details of an updated schedule "C" or the tenant's consent based upon the condition inspection report for the move-out for the increase to a \$40.00 per hour rate, that the landlord's claim has not been entirely established. As such, the landlord's claim is granted for cleaning at 3 hours X \$25.00 = \$75.00 and not \$80.00. I also find that the landlord claim is granted for 2 hours X \$25.00 = \$50.00 and not \$80.00.

The landlord has established total monetary claim of \$1,925.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$822.50 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,202.50.

\$1,580.00	Loss of Rent, December 2020
\$120.00	Replace Broken Lock
\$100.00	Repair Balcony Vinyl Flooring

\$75.00	Cleaning
\$50.00	Junk Removal
\$1,925.00	SubTotal
\$100.00	Filing Fee
\$2,025.00	SubTotal
-\$822.50	Less Security Deposit
\$1,202.50	Total

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 22, 2021

Residential Tenancy Branch