



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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.

The landlord's agent (the landlord) attended the hearing via conference call and provided testimony. The tenants 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.

Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the tenants served the landlord with the submitted documentary evidence in person on April 20, 2021. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

The tenant, K.B. exited the call after being informed that the hearing would proceed in her absence.

The tenant, A.A. stated the K.B. was not involved as she had vacated the rental unit 5 months before the end of tenancy. The tenant, A.A. stated that the landlord had been notified in June 2020 of the tenant, K.B. leaving. The landlord disputes this claim stating that the landlord was not aware of K.B. vacating the rental unit until the end of tenancy when it was discovered that she had already left. Both parties confirmed that no changes to the signed tenancy agreement had been made to remove the tenant, K.B. from the tenancy. On this basis, I find that the landlord is within their right to file for dispute against both of the named tenants as they are both considered co-tenants until the tenancy agreement has been ended.

The tenant, A.A. requested an adjournment due to her submitted evidence being in an unorganized manner. The tenant stated that she was unable to identify her own evidence and would not be able to refer to any of the submitted documentation. The tenant's adjournment request was denied. The tenant has only stated that she was unorganized not that she had not submitted the proper documentation for the hearing. The tenant was advised that she would be given an opportunity to review her evidence during the hearing and to provide direction as to what evidence that needed to be referred to during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet deposits?

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, 2017 on a fixed term tenancy ending on July 31, 2018 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 26, 2017. The monthly rent was \$2,800.00 payable on the 1st day of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 were paid on August 1, 2017.

The landlord seeks a modified monetary claim of \$7,486.55 which consists of:

\$2,825.00	Unpaid Rent, \$2,800.00 November Rent \$25.00 NSF
\$759.31	Unpaid Utilities, Water bill
\$390.35	Dumpster Charge
\$549.49	Steam Carpet Cleaning
\$3,141.12	Damaged Carpet Replacement
\$1,939.32	Deck Flooring Repair
\$346.25	Handyman Bill

Discussions took place with the landlord who clarified that despite providing a monetary worksheet with a total of \$10,347.47, the landlord would limit the monetary application claim to the filed amount of \$7,486.55.

The landlord claims that the tenants failed to pay rent for November of \$2,800.00 and as a result incurred a \$25.00 NSF charge. The tenants dispute the claim arguing that an agreement was made with the landlord to not pay any rent for November if the tenants vacated the rental unit by the 15th. The landlord argued that no such agreement had been made. The tenants were unable to provide any supporting evidence of the agreement. The tenant argued that she was not able to refer the specific evidence submissions as she had not properly organized them for the hearing.

The landlord seeks money owed for unpaid utilities of \$759.31 for water. The landlord stated that the tenants failed to pay the third quarter water bill. The landlord stated that the bill is \$1,138.98 and that the tenants were charged a 2/3 share due to vacating the rental unit on November 15. The tenants stated that the landlord owes the tenants for an overpayment on a previous bill and that the landlord had agreed to offset the overpayment against the water bill. The landlord disputed that no such agreement was made and that there was no overpayment. The tenants were unable to provide any supporting evidence of the agreement.

The landlord seeks \$390.35 for the costs of disposing of garbage items left in the rental unit. The landlord claims that the tenants left some belongings in the rental unit requiring the landlord to remove and dispose of these items. The landlord did not provide an invoice or receipt for this claim. The tenants dispute this claim arguing that they had only left a cabinet, a couch and a chair in the rental unit and some previous

items left by a previous tenant. The tenants argue that only a few things were left in the garage. The tenant referred to evidence file submission, “Felipe witness” and “Felipe witness 2” which shows that she had a witness who can confirm that she had only left a china cabinet, couch and chair and some other items that were previously left over by the last tenant. The tenant argued that she was not able to refer other specific evidence submissions as she had not properly organized them for the hearing.

The landlord seeks \$549.49 for steam cleaning the carpets. The landlord claims that the tenants vacated the rental unit leaving the upstairs carpet dirty. The landlord has submitted a copy of an invoice dated December 17, 2020. The tenants dispute this claim arguing that no garbage was left in the house. The tenants argued that the landlord had notified the tenants that they would replace the carpets. The tenants argue that the landlord had refused to complete a condition inspection report. The landlord referred to the notations on the submitted invoice referring to the notation, “425 urine/vomit spots treated...Due to volume of urine. We highly recommend replacement/ we cannot guarantee a cleaning will solve the problem.” The tenants argued that this was a falsified report provided by the landlord. The landlord disputed this claim. The tenants were unable to provide any supporting evidence that this was a fraudulent document. The tenant argued that she was not able to refer other evidence submissions as she had not properly organized them for the hearing.

After 75 minutes into the hearing, the landlord abandoned the remaining monetary claims:

\$1,939.37	Deck Flooring Repair
\$3,141.12	New Carpet
\$346.25	Handyman Bill

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. In this case, the onus is on the landlord to

prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has established a monetary claim for:

\$2,825.00	Unpaid Rent, November/NSF
\$759.31	Unpaid Utility, Water Bill, Q3 2/3 share of \$1,138.97
\$549.49	Steam Carpet Cleaning

In each of the above claims, the landlord has provided consistent and reliable evidence regarding unpaid rent, unpaid utilities and the requirement to steam clean the carpets. Despite the tenant arguing that an agreement had been made for the tenants not to pay any rent, that an agreement had been made to offset unpaid utilities for an overpayment of utilities and that the landlord had provided a fraudulent document (i.e. Invoice for steam cleaning) as proof of cleaning, I find the landlord's evidence to be credible. As such, the landlord has been successful in these portions of the monetary claim.

The landlord was unsuccessful in establishing a claim for \$390.35 for dumpster/garbage costs. Despite the tenants disputing this claim, but confirming that a china cabinet, couch and chair was left behind by the tenant, the landlord was unable to provide any evidence (i.e., receipt/invoice) for this claim. However, as the tenant has confirmed that these 3 items were left and not claimed by the tenants, I find that the landlord is granted an arbitrary nominal award of \$75.00.

The landlord is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to offset the \$4,308.80 claim against the \$1,400.00 security and the \$1,400.00 pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$1,508.80.

This order must be served upon the tenants. Should the tenants 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: May 4, 2021

Residential Tenancy Branch