



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 88West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL, MNDCL, FFL, MNDL**

Introduction

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

- A monetary award for damages, loss and unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent to the address for service provided by the tenant on January 2, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on January 7, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord corrected a typographic error in the applicant's name. The corrected spelling is used in the style of cause for this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in June 2020 and ended on January 8 2021 in accordance with an Order of Possession issued after a hearing under the file number on the first page of this decision. The monthly rent was \$2,800.00 payable on the first of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that the tenant failed to pay full rent for the months of October, November, December 2020 and January 2021 and there is a rental arrear of \$8,900.00 as at the date of the hearing.

The landlord also submits that they were unable to find a new occupant for the rental unit until March 2021 and at a lesser monthly rent. The landlord seeks a monetary award for the loss of rental income.

The parties prepared a move-in condition inspection report at the start of the tenancy. The tenant did not participate in a move-out inspection despite the landlord offering multiple opportunities. The landlord completed the inspection report in the absence of the tenant and discovered the rental unit had multiple deficiencies and damage. The landlord submits that the rental unit required considerable cleaning, garbage disposal and repairs in the amount of \$5,748.50. The landlord submitted multiple photographs of the rental unit as well as receipts and invoices for the work.

The landlord further submits that the flooring of the rental unit was damaged and it will require replacement. The landlord submitted into evidence a quote from a flooring company in the amount of \$11,340.00 which the landlord claims.

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 the present case I accept the undisputed evidence of the landlord that there was an enforceable tenancy agreement whereby the tenant was obligated to pay rent in the amount of \$2,800.00 each month. I accept the evidence of the landlord that the tenant failed to pay the full rent for several months of the tenancy and there is a rental arrear of \$8,900.00. I issue a monetary award in that amount accordingly.

I accept the evidence of the landlord that the rental unit was left in a state of disarray requiring the landlord spend several weeks to restore it to its pre-tenancy condition and offer it to new occupants. I therefore find that the landlord incurred a loss of rental income for the month of February 2021, which is directly attributable to the condition of the rental unit left by the tenant. I therefore issue a monetary award in the amount of \$2,800.00 for loss of rental income.

I find insufficient evidence in support of the landlord's claim for loss of rental income arising from the difference in the monthly rent payable by the tenant and the new monthly rent charged to the new occupant. I find insufficient evidence that the landlord was not able to mitigate their losses by finding a new occupant at a higher monthly rent. There is little evidence of the steps taken by the landlord and how the new monthly rent was calculated. I therefore find that the landlord has not met their evidentiary burden to demonstrate that their loss of rental income arises as a result of the tenant's actions or negligence and dismiss this portion of the application.

I accept the evidence of the landlord that the rental unit required considerable, cleaning, repairs and maintenance due to the state left by the tenant. I find the condition inspection report to be sufficient evidence of the state of the rental unit and the additional photographs submitted by the landlord are consistent with the damage noted in the report. I find that the description of the work performed by the landlord to be reasonable and proportional to the damage found in the rental unit. I find the receipts and invoices to show that the nature of the work was to restore the rental unit to its pre-tenancy condition and reasonable. I therefore find the landlord is entitled to a monetary award in the amount of \$5,748.50 for the damages and losses incurred as a result of the state of the rental unit.

I find insufficient evidence that the landlord has incurred losses as a result of the condition of the flooring to give rise to a monetary award. The undisputed evidence of

the landlord is that they have obtained a quote for replacement of the flooring of the rental unit but have not made any repairs. The landlord further testified that they have found a new occupant for the rental unit and they are now residing in the suite, utilizing the existing flooring. I find insufficient evidence that the landlord has incurred any losses as they have allowed a new occupant to reside in the rental unit using the existing flooring. I consequently dismiss this portion of the landlord's application.

As the landlord was primarily successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$16,148.50, allowing for the recovery of unpaid rent, rental income losses for February 2021, the cost of repairs and cleaning and recovery of the filing fee and to retain the security deposit for this tenancy. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 3, 2021

Residential Tenancy Branch