



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on January 5, 2021 seeking an order to recover the money for unpaid rent, and an order for compensation for damage to the rental unit. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 10, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference all hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenants with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the landlord stated that they used Canada Post registered mail to send the Notice of Hearing to each tenant. This package included the evidence the landlord presents in this hearing. The landlord gave testimony that the address they provided on the registered mail package was that of a forwarding address where the tenants reside, one they had provided. They provided a Canada Post registered mail tracking number – this information appears in the landlord’s evidence for each of the two tenants. Using this tracking number, they verified that the package to each tenant was delivered.

I accept the landlord’s undisputed evidence that the package was sent to the tenants via registered mail. Based on the submissions of the landlord, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the tenants’ absence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent, and/or compensation for damage pursuant to s. 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on February 25, 2020 for the tenancy starting on March 1, 2020. The monthly rental amount of \$1,400 remained the same until the end of tenancy. The rent was payable on the 30th/31st of each month, for the following calendar month in advance. The tenants paid an initial security deposit of \$700.

The landlord also provided a copy of the “Additional Rental Conditions Acknowledgement: signed by the parties on February 25, 2020. This gave further information on pets, use of the wood stove, no smoking, and repairs. The landlord also completed a document that listed the conditions for all rooms and appliances in the rental unit. This bears no notation; however, there is the indication that there were 2 keys each for the front and back doors.

The landlord provided background in the hearing regarding the end of the tenancy. They obtained an order of possession through a separate dispute resolution proceeding, dated November 18, 2020. The final day of the tenancy was December 13, 2020 when the tenants moved out.

On that day, the landlord did not schedule a move-out inspection meeting due to safety concerns. They attended to the unit after the tenants completed their move out and made the assessment of the condition of the unit and took photos and documented what they observed. These photos and the landlord’s listed observations are in their documentary evidence. As stated above, I am satisfied they disclosed this evidence to the tenants.

In their evidence, the landlord included an image of a text message sent to them on December 17, 2020. This was how the tenants provided their forwarding address to the landlord.

The landlord completed a monetary order worksheet on January 4, 2021. This is an itemized list of expenses and losses. They separate their claim into three areas. The amounts they provide on their worksheet break down into each category as follows:

1. rent amount owing: \$1,400:

- this is December 2020. The tenants did not pay rent on November 30th for the following month of rent. When asked the tenant responded to say “nope there won’t be any rent” to the landlord. The landlord claims this amount for being unable to rent the unit to new tenants for December 2020.
- The landlord provided a message dated December 16, 2020 when they made these two points known to one of the tenants. This shows the tenants response: “Won’t be any rent for dec as to ur [sic] wanting us out in such a short order. . .”
- With the same message to the other tenant, the response was: “Pls do not message me EVER again.”

2. materials for damages and repairs: \$1,685.22

Item(s)	\$
materials paint flooring supplies	510.22
gas – travel expense	225.00
time cleaning house	500.00
time renovating damages	450.00
travel time	540.00
Total	\$2,225.22

- The damage to the floor was due to ashes on the carpet and the smell of smoke, requiring replacement of the carpet with laminate flooring. This flooring at \$204 was the cheapest available.
- They painted the living room to remove the smell of cigarette smoke
- There were holes in the walls (12” x 12”) and cat scratches requiring repair. This required materials and their own labour where they performed repairs on their own rather than hire a contractor.
- They provided an image of accounting for gas purchases, from December 15, through to January 4.
- Their own time was placed at \$25 per hour, for 18 hours total.
- Their own travel was 36 hours total, requiring 9 trips to and from their own home in a different area.
- They provided receipts and 16 pages of photos showing damage throughout the unit.

3. travel time to deal with damages and repairs: \$540

- Their own travel was 36 hours total, requiring 9 trips to and from their own home in a different area.
- This was a 4-hour drive round trip, with travel between December 15 and January 1. This was 9 trips in total, at \$15 per hour.

Adding a \$100.00 Application filing fee for this hearing, the total amount of the landlord's claim is \$3,725.22.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, the landlord's worksheet identifies three separate amounts: recovery of rent amounts; cleaning and repair costs including their own labour, and travel time. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

The *Act* s. 26 requires a tenant to 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 the *Act* to deduct all or a portion of the rent.

From the landlord's evidence – which is uncontested by the tenants – I find they did not pay the rent amount owing for the month of December 2020. There is evidence of repeated reminders from the landlord, with terse replies from the tenants that they would not make that payment. They stayed past the effective date of the order of possession, which upon service sets a firm end of tenancy. The order of possession here specifies two days for the tenants to deliver possession to the landlord. I find this was prior to the 30th of November when rent for the following month was required.

Further, I find the landlord has shown a significant amount of damages and the need for repair required their efforts through to the end of December. This is a period of time in which the landlord was not able to rent the unit, and from the evidence presented I find this represents a loss to the landlord. With this finding, I award the amount of \$1,400 rent to the landlord.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

For each amount presented, I find the landlord has verified the amount in question and provided proof that the amount owing is in relation to the tenancy. The photos of damage are strong evidence in this regard. I find the landlord minimized their monetary loss by undertaking repairs on their own initiative and choosing the least expensive option available to replace flooring. As a result, I find the total amount of \$510.22 in full is that owing from the tenants to the landlord for materials. I make the award for this amount to the landlord.

The landlord provided a detailed account of their own time to accomplish the tasks for damages to the rental unit and cleaning. This is a day-by-day account of particular activities undertaken, both categorized according to the type of damage or cleaning, particular for each room in the rental unit, and a daily log. I find this shows accuracy and what is presented is in line with their final inspection photos showing damage or the need for cleaning. Therefore, I award the full cost of their cleaning time and time undertaking repairs – at \$500 and \$450 – for the total amount of \$950.

The landlord also claimed for travel time at \$15 per hour for 36 hours. This is \$540. They also claimed \$225 for gas. Their own home location is 2 hours away from the rental unit. This is a significant cost. They have established the need for time devoted to cleaning and repairs in the rental unit; however, I find this expense is more related to their own home location. It only marginally relates to the breach of the *Act* by the tenants. For this reason, I make no award for these costs to the landlord.

The landlord has properly made a claim against the security deposit and have the right to do so. The landlord is holding this amount of \$700. I order this amount deducted from the total of the rent, cleaning and repair costs set out above. Reducing the total by \$700 brings the total monetary order to \$2,160.22. Applying the security deposit to an amount owing is permissible by s. 72(2)(b) of the *Act*.

Because the landlord was successful in their claim, I award the \$100 Application filing fee.

Conclusion

Pursuant to ss. 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,260.22 for compensation set out above and the recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: May 14, 2021

Residential Tenancy Branch