



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on January 25, 2021 seeking an order to recover monetary loss for damages and compensation for other money owed by the tenant. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on May 28, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not attend. In the hearing, the landlord provided that they delivered notice of this hearing to the tenant via registered mail. This was on January 26, 2021 to a forwarding address provided by the tenant after the tenancy ended. The record of delivery shows a completed delivery on January 29, 2021.

In consideration of this testimony presented by the landlords, and with consideration to s. 89 of the *Act*, I find the tenant was sufficiently served with notice of this hearing, as well as the landlord’s prepared evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages, or other money owed, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlord and the tenant signed this agreement on August 27, 2020 for the tenancy starting on August 28, 2020. This was for a fixed term ending on January 1, 2021. The monthly rent was \$1,250. The tenant paid a security deposit of \$600.

The tenancy ended when the tenant advised the landlord that they wished to end the tenancy on December 31, 2020. This was for personal reasons regarding the size of the accommodation.

The landlord attended the unit on December 31, 2020 for a move-out inspection meeting. The landlord stated the tenant was present initially and asked that the meeting be delayed for around one hour so they could finish cleaning. The landlord left the unit to accommodate the tenant's request, and then within 20 minutes the tenant left.

After this, the landlord completed the Condition Inspection Report on their own after reviewing the condition throughout the unit. The record shows the landlord sent a message to the tenant on January 8, 2021 advising of what they discovered in the unit. This included:

- smell of cigarettes
- cat-scratched walls which needed repairs and paint
- cleaning throughout – this took over 8 hours – for \$200
- cat food/litter throughout
- the cost estimate to paint the unit is \$2,142
- garbage left had to be taken to the dump
- \$30 of movie rentals through the landlord's cable account

In this message the landlord advised they would file their Application for dispute resolution. They requested that the tenant sign a letter that authorized the landlord to keep the security deposit. This would alleviate the need for the landlord to continue with the dispute resolution process.

The tenant responded to question the landlord's observations of the cleanliness of the unit and proposed \$100 for cleaning and the \$30 movie rental costs. On January 13, 2021 the tenant provided their forwarding address to the landlord via email.

The landlord provided an accounting with a detailed account for their Application. This lists the following amounts:

#	Item(s)	\$ amount
1	compensation for new tenants who could not move in until February 5	240.00
2	cleaning costs at \$25/hr (w/ receipt)	200.00
3	cost for garbage removal (w/receipt)	12.00
4	tenant's movie rental cost using landlord's cable account	30.00
5	painting w/ receipt showing this amount (w/ quote)	2,142.00
6	Application filing fee	100.00
7	photocopies/pics preparation (Walmart receipt)	72.00
8	printing cost (staples receipt)	33.00
Total		2,827.00

The landlord submitted many photos showing details of damage throughout the rental unit. They also provided three first-hand accounts of individuals who observed the state of the unit after the tenant moved out.

For item 2, the landlord provided a receipt that shows cleaning through all rooms. This includes walls and appliances. For item 5, the invoice shows "smoke damaged ceilings" and "smoke damaged walls".

For item 1 above, the landlord provided that they had new tenants in place on February 6. This is a delay from the 1st of February for which those tenants paid. The landlord reimbursed these new tenants for 6 days they were not able to move into the unit.

The landlord also provided a copy of the condition inspection report, dated for the move in on August 28, 2020, and for the move out on December 31, 2020. The move-in portion bears both parties' signatures. The landlord only signed the report for move out. The Report list several items throughout rooms as "dirty" and lists specific items at the end of the report: "Scratch on wall from her cats, walls needed repainted from smell of cigarettes still in suite, suite needed to be cleaned."

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount. I am also satisfied the tenancy ended in the manner described by the landlord in the hearing.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

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.

Concerning the condition of the unit at the end of tenancy, s. 37 specifies that a tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

I find the landlord’s evidence presents there was a loss to them for necessary cleaning to the unit. What they presented was a level of cleaning necessitated by something beyond the unit being “reasonably clean” as the *Act* specifies. The landlord proved the loss to them for cleaning costs exists, and I find they have established the value thereof. I award this \$200 portion of the landlord’s claim.

Further, I accept the landlord’s evidence that the rental unit was not in a state for new tenants to move in the following day. The cost of reimbursement was borne as a loss by the landlord; this results from the breach of s. 37 by the tenant here. I so order the amount \$240 awarded to the landlord.

I find similarly for the cost borne for garbage removal. With the amount of \$12, I find the landlord has mitigated that amount of loss.

I find the tenant acknowledged the \$30 cost for movie rental in their message to the landlord when they replied earlier to dispute the landlord’s calculation of the amount of cleaning. I so award the \$30 amount to the landlord.

The costs for preparing for this hearing are not those specified as compensable under the *Act*. These do not directly result from a breach of the *Act* or tenancy agreement. These amounts (\$72 and \$33) of the landlord’s claim are denied.

With regard to the four-steps set out above, I find the landlord has not presented an actual cost incurred for the painting. At the time of their Application, the quote

presented was for \$2,142. The landlord did not provide an updated amount to show that they actually paid for painting of the rental unit. Moreover, the pictures as evidence presented do not show the need for repainting of the unit walls and ceilings. The landlord has not established the value of this part of their claim. For this reason, the portion of their claim is denied.

The landlord has provided sufficient evidence and testimony to show an amount of \$482. I so award this amount to the landlord.

Because they are successful in their Application, I grant the \$100 cost of the filing fee to the landlord. The total thus awarded is \$582.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlords have established a claim of \$582. I am authorizing the landlord to keep the entire \$600 security deposit amount as compensation to them. This is full satisfaction of their claim for damages and other loss arising from this tenancy.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord an award of \$600 in satisfaction of their claim. They are authorized to keep the entirety of the \$600 security deposit paid to them at the start of the tenancy.

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 28, 2021

Residential Tenancy Branch