



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an application for dispute resolution (the “Application”) on February 8, 2021 seeking an order for: compensation for: damage caused by the tenant, rent owing, and monetary loss or other money owed. 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 June 10, 2021 and June 23, 2021. Both parties attended these conference call hearings. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony during the hearing.

Preliminary Matter

In the initial hearing, the landlord provided they sent notice of this hearing and their prepared evidence each of the two tenants via registered mail. This was to the address provided by the tenants at the conclusion of the tenancy.

At the initial hearing, the tenant who attended provided they received no notice of this hearing from the landlord. Moreover, they received no evidence from the landlord.

I adjourned the matter to allow the landlord the opportunity to send their evidence to the tenant. In the Interim Decision, I provided the instruction to the landlord that this should happen via email. I provided that at the outset of the reconvened hearing I would ensure that the landlord’s evidence was available to the tenant.

In the reconvened hearing, the tenant confirmed they received emails from the landlord with attachments. They were not able to confirm they received all images from the landlord.

Based on these statements, I confirm that the landlord completed service of their evidence in the prescribed manner. Because of this, I afford their evidence full consideration because the tenant had full opportunity to review the evidence prior to the reconvened hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, rent owing, and/or other monetary loss, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement between the parties, and neither party disputed the terms therein. Both parties signed the agreement on November 30, 2020 for tenancy starting on November 31, 2020. The monthly rent was \$2,075 per month, and the tenant paid both a security deposit and a pet damage deposit, for \$1,000 each, on December 1, 2020. The final page of the document contains the notation: "6 month fixed term. No smoking. No use of lower levels and dock."

The landlord provided that there was an initial inspection of the rental unit on November 30, 2020. They provided a detailed report of this with the signature of the single tenant who attended the hearing. The tenant denied receiving a copy of the tenancy agreement and the completed condition inspection report; however, the landlord provided in the hearing they provided both of these documents to the tenants. They did

this by taping a copy of these documents to the door of the rental unit on December 15, 2020.

The landlord described how the tenants did not raise concerns about the state of the unit when the parties initially met to review its condition. Approximately 3 to 4 weeks later, the tenant sent pictures to the landlord and wanted money back. The landlord offered to visit to examine and address the tenants' concerns; however, the tenants refused this offer and only wanted money, according to the landlord.

The tenant described their version of this, where they found the level of cleanliness in the rental unit to be unsatisfactory at the start of the tenancy. The move in was "seriously rushed", and the tenant proposed having their deposit credited.

The tenancy ended in February 2021. This was after the landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") on February 3. The tenants advised the landlord of their move-out final day of February 6. This was done via written notice that was placed in the landlords' mailbox in the evening on February 3. This notice included the tenants' forwarding address.

The tenants moved out on February 6, 2021. The landlord requested that the tenants advise them of when a move-out inspection meeting could happen; however, this did not occur. One of the tenants came to the property to move out; however, that was not the tenant present in the hearing and this tenant was not aware of the other tenant being at the property on that date. The landlord claims compensation for the full amount of monthly rent for the month of February 2021. This is \$2,075.

In the hearing, the tenant presented that they had the right to end the tenancy because of the landlord's breach of material terms. These were health and safety standards, no tenant copy of the tenancy agreement, and quiet enjoyment.

In their Application, the landlord provides that the tenants left "under \$500 in personal belongings . . . to dispose of." This was "garbage and personal effects" to be removed and disposed of. They provided that they sent an email to the tenants on February 7th or 8th to advise that the materials were being dumped; however, there was no response from the tenants. At this point they did most of the work themselves for removal of these items.

The landlord provided photos to show items throughout the unit requiring clean-up and removal. There were a number of boxes and furniture items throughout as shown in the

pictures. On a Monetary Order Worksheet, the landlord provided the amount of \$178.35 for a dumping fee.

In response to this, the tenant at the hearing provided that they made an arrangement with a third party to pick up those items. They never heard back from this third party after making the arrangement; thus, they assumed the items were gone.

On their Monetary Order Worksheet, the landlord claimed for painting, in the amount of \$1,900. This was for “smoke smell remedy” and they provided photos which presented that the tenants smoked in the unit. In the hearing the landlord stated this was for “two-thirds” of the unit, completed between the 15th and 25th of February. The invoice from the painter who completed the work came to them later, after a quick job. The landlord did not present an invoice in their evidence.

The tenant in the hearing denied smoking in the unit. They presented that they exited the unit when they needed to smoke. The landlord’s photo labelled as “ashtrays” actually shows plant food. With the tenancy being very short-term in duration – i.e., two months – there is no damage from smoking that did not happen in that time.

The landlord also presented an invoice dated February 11, 2021, for cleaning services in the amount of \$252. This was for a short-notice cleaning to take place prior to February 15th, in order to have new tenants in short order. According to the landlord, the cleaners noted the odour and poor state of the carpet.

The tenant in the hearing maintained that the state of the rental unit was poor at the start of the tenancy. They reiterated that they requested extra cleaning in the rental unit within 4 days of the start of the tenancy in December 2020.

In total, the landlord’s claim for compensation is for the amount of \$4,405.35.

Analysis

The *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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.

Based on what the landlord presented with photos of personal items left behind by the tenants, I find compensation is warranted. The landlord, however, did not provide tangible proof of the cost of this work. I am satisfied this presented considerable work due to the tenants' abandonment of personal property. For this, I award \$150. This is based on the landlord's proof that fair amount of actual work was required; however, the actual cost thereof was not established.

For the amount of painting involved, the landlord provided neither proof of the need for painting, nor the cost thereof. I am not satisfied that smoking was present to a degree that warranted repainting of two-thirds of the whole unit. A picture of what is deemed to be an ashtray is not sufficient evidence for this claimed amount. There are no other pictures of wall damage or paint/colour deficiencies. Additionally, the landlord did not submit an invoice showing this was an actual cost they incurred. I dismiss the entirety of this portion of the landlord's claim for this reason.

What the tenant presented in terms of the unit initially needing cleaning upon their move-in does not offset what the landlord presented in terms of the need for cleaning at the end of the tenancy. From the evidence I am satisfied there was an abrupt ending to the tenancy. From the photos provided by the landlord I find there are so many personal possessions abandoned by the tenants that this prevented the tenants' proper cleaning of the unit to the standard set by s. 37. This is bolstered with the evidence of the details on the Condition Inspection Report.

The landlord presented an invoice for the cost they incurred for cleaning the rental unit. I find this is sufficient evidence to show that amount. I find the \$252 amount claimed is legitimate and make an award for the compensation thereof.

The tenant in the hearing presented that they had the right to end the tenancy in an abrupt manner based on what they determined were breaches by the landlord. They notified the landlord of their move out after the landlord issued a 10-Day Notice. What the tenant presented does not explain why rent was not paid on January 31 as the tenancy agreement specifies. If the tenant was withholding rent because of alleged breaches by the landlord, they did not explain this in the hearing.

In any event, the landlord did not receive rent for the month of February 2021 and they were put out by the tenants' abrupt ending to the tenancy. This was mere days before their departure on February 6, 2021. I find this is a real loss to the landlord; moreover, I find the landlord faced a challenge in maintaining the unit and returning it to a suitable state for new tenants to come into it.

I find the landlord faced a challenge in re-renting the unit; however, I am not satisfied of the expediency with which they undertook this effort. The landlord presented that painting took place from the 15th to the 25th, with the individual who performed that work doing so in evenings and in extra spare time. This extended the timeline for having new renters in place, and above I stated I was not satisfied of the need for painting within the unit. I find this is not an effort at mitigating their loss.

To compensate for the imposition of the tenants' very short-term notice, I award the landlord \$1,498 for this amount.

As the landlord is successful in this Application for compensation, I find that the landlord is entitled to recover the \$100 filing fee.

The landlord has made their claim against the security deposit and the pet deposit. The landlord is holding this amount of \$2,000. I authorize the landlord to keep both deposits in satisfaction of their claim. This constitutes the award amount I am granting in this dispute. I make this authorization through the application of s. 72(2)(b) of the *Act*.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I authorize the landlord to keep the full amount of deposits withheld, in the amount of \$2,000. This is for a rent amount owing, other monetary loss, and a recovery of the filing fee for this hearing application.

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: June 28, 2021

Residential Tenancy Branch