



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing dealt with the landlord's application for monetary compensation for unpaid rent and damage to the rental unit. The landlord appeared at the hearing and was affirmed. The tenant did not appear despite leaving the teleconference call open approximately 30 minutes.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that he sent the proceeding documents and evidence to the tenant via registered mail on February 21, 2021. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the registered mail tracking number showed the registered mail was delivered to a community mailbox and there was no signature of the recipient.

As for the address the landlord used to send the registered mail, the landlord testified that when the tenancy started in 2019 he obtained an address for the tenant that appeared on her BC Services card. The landlord further testified that when the tenancy came to an end at the end of January 2021 the tenant confirmed that the landlord may send her documentation at that same address that appeared on her BC Services card at the start of the tenancy. The landlord testified that on February 24, 2021 he called the tenant and she confirmed that she had received the hearing package.

In the absence of any evidence to the contrary, I accept that the landlord sent the hearing materials to the tenant at a forwarding address the tenant orally provided to the landlord at the end of the tenancy, via registered mail. Therefore, I accept the tenant was duly served with notification of the claims against her and I continued to hear from the landlord without the tenant present.

On another procedural note, I ordered the landlord to provide an invoice and proof of payment with respect to the repairs made to the rental unit by uploading the additional evidence to the Residential Tenancy Branch Dispute Management System. The deadline for doing so was set as by the end of day on June 16, 2021. I cautioned the landlord that if he did not provide the ordered evidence, I would make a decision without it. As of the date of writing this decision I have not received a copy of the invoice or proof of payment that I had ordered the landlord to provide and I make this decision without the benefit of that evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent in the amount claimed?
2. Is the landlord entitled to compensation for damage to the rental unit, as claimed?
3. Award of the filing fee.

Background and Evidence

The one year fixed term tenancy started on October 1, 2019 and continued on a month to month basis upon expiry of the fixed term. The tenant was required to pay rent of \$1369.00 on the first day of every month. The tenant paid a security deposit of \$684.50 and a pet damage deposit of \$199.00. The landlord confirmed that he is still holding the tenant's deposits.

The landlord submitted the the tenant paid only \$1000.00 toward rent for October 2020; the tenant did not pay any rent for November 2020 or December 2020; and in January 2021 the tenant paid the landlord \$1500.00. The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") in January 2021 and the tenant moved out by the end of January 2021.

The landlord seeks to recover the unpaid rent of \$369.00 for October 2020; \$1369.00 for November 2020; \$1369.00 for December 2020; less, the overpayment of \$131.00 [\$1500.00 - \$1369.00] received in January 2021 for a net balance owing of \$2976.00. I note the landlord had requested \$3100.00 in unpaid rent on his Application for Dispute Resolution; however, the landlord confirmed \$2976.00 is the accurate amount of outstanding rent.

The landlord also seeks \$1450.00 for damage to the entry door and door frame. The landlord testified that the strata counsel called him to inform him the door was hanging off. The landlord spoke with the tenant, who told him that her daughter had called 911 and the emergency responders broke down the door. The landlord provided a copy of an estimate that provides for three options. The landlord testified that he went with the third option: complete replacement of the door and door frame, the most expensive option. The landlord claimed the strata counsel required him to fully replace the door and door frame and he could not go ahead with the less expensive option 1 or 2. The landlord testified that he obtained other quotes from other contractors but he decided to use the contractor the strata counsel had dealt with before.

The landlord provided photographs of the door and door frame and the quote referred to above. The landlord did not provide copies of any of the other estimates he received from other contractors. The landlord confirmed to me that he has made the repair. I asked the landlord how he paid for the repair and he said cash. I asked the landlord if he had the invoice for making the repair to which he said he did. I ordered the landlord to provide me with a copy of the invoice and proof of payment by end of day on June 16, 2021. The landlord did not provide the additional evidence I ordered him to provide by the deadline.

Analysis

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 section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Unpaid rent

Under section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Upon review of the tenancy agreement, I accept the tenant was required to pay rent in the amount of \$1369.00 every month. I accept the unopposed evidence before me that the tenant failed to pay the full monthly rent for the months of October 2020 through December 2020 and I was not provided any evidence to suggest the tenant had the legal right to withhold any rent. I further accept the landlord's unopposed evidence that the tenant paid him \$1500.00 in January 2021 and vacated the rental unit at the end of January 2021. Therefore, I find the landlord entitled to recover the unpaid rent of \$2976.00 from the tenant, calculated as:

Unpaid rent for October 2020 (\$1369.00 – \$1000.00)	\$ 369.00
Unpaid rent for November 2020	1369.00
Unpaid rent for December 2020	1369.00
Overpayment of rent in January 2021 (\$1500.00 – \$1369.00)	<u>(131.00)</u>
Total unpaid rent	\$2976.00

Damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy.

The landlord asserted the tenant is responsible for damaging the entry door and door frame during the tenancy. As proof of his loss, the landlord provided a copy of an estimate to have the door and/or door frame repaired and/or replaced and the landlord is claiming the most expensive option provided on the estimate. However, I note that the estimate was prepared for the strata counsel, care of the strata property management company and does not identify the rental unit or the landlord's name. The landlord claims to have paid for the door and door frame replacement "in cash"; however, in the absence of an invoice issued to him, proof the landlord made a payment for the repair, or documentation showing the strata counsel charged his strata account, I find the landlord failed to provide sufficient evidence to substantiate that he suffered a loss of \$1450.00, or some other amount, if in fact he suffered a loss. Therefore, I

dismiss the landlord's claim for damage due to insufficient proof of a loss, without leave to reapply.

Filing fee

The landlord's claim had some merit and I award the landlord recovery of the \$100.00 filing fee.

Security deposit and pet damage deposit

The landlord confirmed to me that he continues to hold the security deposit and pet damage deposit. The landlord did not request authorization to retain the deposits; however, I find it appropriate to take the deposits into account in issuing a Monetary Order since the landlord has those funds in his possession which can be used to reduces his losses. Therefore, I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order in the net amount of \$2192.50 to serve and enforce upon the tenant, calculated as follows:

Unpaid rent	\$2976.00
Filing fee	100.00
Less: security deposit	(684.50)
Less: pet damage deposit	<u>(199.00)</u>
Monetary Order	\$2192.50

Conclusion

The landlord was partially successful in this application. The landlord is authorized to retain the tenant's security deposit and pet damage deposit and is provided a Monetary Order for the balance owing of \$2192.50 to serve and enforce upon the tenant.

The landlord was unsuccessful in establishing the loss suffered as a result of damage caused by the tenant and that portion of his claim is dismissed without leave to reapply.

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: June 17, 2021

Residential Tenancy Branch