



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on March 22, 2021 seeking an order for compensation for damage to the rental unit, and 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 August 23, 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 tenant 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 the document has been served by a method allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the landlord stated they used registered mail, one package for each tenant. This included the evidence the landlord presented in this hearing. This was not returned by the postal service, and the landlord provided proof of delivery in the form of tracking numbers.

I accept the landlord’s undisputed evidence that the package was sent to each tenant 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 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 November 29, 2014 for the tenancy starting on December 1. The monthly rent amount was \$1,300, payable on the 1st of each month. The tenants paid an initial security deposit of \$650. By the time of the end of tenancy, the rent increased to \$1,477 monthly.

The tenants had received written warnings from the property manager concerning disturbances to the neighbours. A copy of the notice dated December 14, 2020 is in the landlord's evidence, and this gave information to the tenants that "we will have no alternative but to serve you with a thirty days' notice under this section [i.e., s. 38 of the tenancy agreement]". On January 4, 2021 the landlord issued a One-Month Notice to End Tenancy for Cause, giving the final move-out date of February 28, 2021.

This ended the tenancy. In the hearing, the landlord specified that the tenants were supposed to move out by February 28; however, they moved out from the rental unit on March 7. On this final move-out day, the landlord did not enter the rental unit to carry out an inspection with the tenant present. According to the landlord, the tenants did not allow the landlord to enter the unit. The landlord inspected the condition of the rental unit the following day with a maintenance person.

In their evidence, the landlord provided a copy of a document entitled 'Security Deposit Refund'. This shows the tenants also paid a \$650 "pet deposit." This lists the following amounts as deductions, totalling \$2,678.85:

- cleaning: \$240
- cleaning materials (20%): \$48
- painting: \$532

- painting materials (35%): \$186.20
- drywall repair: \$320
- furniture removal: \$200
- 3 closet doors: \$312.65
- bathroom and bedroom doors: \$690
- tub wall surround: \$150

In addition to this, the landlord presented their own Condition Inspection Report and an edited form in which they summed up the damage to the rental unit:

All walls have drawings, some walls have huge holes, at least 7; tub wall surround damaged, all bedroom doors, bathroom door, closet doors are damaged, broken, missing (bedroom)

This is the document that contains the tenant's forwarding address and lists the dollar amount total as set out above. In the hearing the landlord testified that they spoke with the tenant, and the tenant thought it was "wear and tear": "We were there for a long time, we shouldn't pay." For this reason, the tenant did not sign the Condition Inspection Report as normally required.

The landlord provided that the March 2021 rent was not cancelled because the tenant did not move out on February 28. The landlord attempted to propose a solution by asking the tenant to sign a transfer of the security deposit amount; however, the tenant did not agree to this.

In their Monetary Order Worksheet, the landlord provided detailed items for each of the items listed above. To supplement this, the landlord provided receipts for each of the items listed. Additionally, the landlord provided photos showing detail of the need for work throughout the rental unit. This includes cleaning for major appliances and each room throughout the unit, broken or removed doors, ceiling and wall damage, and a number of items left remaining in the unit.

The tenants did not attend the scheduled hearing and did not provide documentary evidence.

Analysis

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.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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 shows a comprehensive listing of work undertaken and associated costs. 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.

For the amounts claimed for damage and clean-up to the rental unit, I find the landlord has verified the amount they calculated and provided proof that the amount owing was paid by them. As a result, I find the amount \$2,678.85 satisfies the landlord's claim for damage and clean-up costs. On my review, I find this is a reasonable cost for the number of items needing clean-up or repair throughout the unit. This is not wear and tear as the tenant so described it to the landlord. I so award this amount to the landlord via monetary order.

The landlord has properly made a claim against both the security deposit and the pet damage deposit; they have the right to do so. The landlord is holding this amount of \$1,300. I order this amount deducted from the total of the rent and damage costs. Reducing the total by \$1,300 brings the total monetary order to \$1,378.65. 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 Application, I grant the reimbursement of the \$100 Application filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,278.65 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, the landlord may file this Order in the Small Claims Division of the Provincial Court where it will be 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: August 31, 2021

Residential Tenancy Branch