



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 March 18, 2021 seeking an order to recover the money for unpaid rent, for damage to the rental unit, and 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 August 19, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served 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 the tenant. The 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 the tenant’s current address as provided by a mutual contact. They provided a Canada Post registered mail tracking number – this information appears in the landlord’s evidence. Using this tracking number, they verified that the package was delivered on March 25, 2021.

I accept the landlord’s undisputed evidence that they sent the package to the 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 tenant's absence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent, and/or compensation for damage and other 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

The landlord provided a copy of the two-page rental agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement for the tenancy that started on March 1, 2020 for the fixed term through to August 31, 2021. The monthly rental amount was \$2,000. The tenant paid an initial security deposit of \$1,000. In the hearing the landlord specified that there were no pets allowed, and the number of occupants was limited to 4.

The landlord provided background in the hearing involving the tenant's notice that they wished to end the tenancy. This is the document submitted in evidence dated June 29, 2020. The tenant advised the last day of the tenancy would be July 31, 2020. In this note, the tenant provided a "forwarding email address" for the purpose of the return of the security deposit.

The landlord also outlined the issue of the tenant having a pet dog, despite the tenancy agreement disallowing that. The landlord posited this was the reason for the tenant wanting to end the tenancy when they advised of that via text message on June 27. After further dialogue, the tenant advised the landlord, as paraphrased by the landlord in the hearing: 'I am not responsible for paying any of your rent.'

The tenant then "abandoned" the rental unit on July 6, 2020. In a written statement, the landlord provided that "[The tenant] broke the lease and did not pay July rent and caused a ruckus on [their] way out." The landlord advised the tenant they would apply for compensation of the July rent, to which the tenant responded they would keep the key. Here the landlord applies for recompense of the July rent, which is \$2,000.

With tension arising at the end of the tenancy, the landlord feared the tenant was attempting to frustrate their efforts at having new tenants come in. This involved the police, who advised both parties to refrain contact, and the landlord increased their own use of security cameras because of other parties' intrusion to the rental unit area. Because of these difficulties with the tenant's interference in the landlord's own efforts with finding new tenants, the landlord hired a property management company to find new tenants. This was due to "safety issues" which included the tenant's own family members posing as prospective tenants, online advertising being removed, and "tenants gf behaviour towards my child when tenant was not home."

The landlord claims the cost for this 3rd party assistance; this is \$1,232. The landlord provided an invoice from the property manager who handled this task. This included "premium advertising, conducting viewings. . . background & credit checks. . . conducting condition inspection . . . signing lease with prospective tenant, and all administrative costs."

The landlord also provided an invoice for cleaning in the rental unit, for July 13 and 14. This was "Move in/out Deep Clean" for \$349.99 and carpet cleaning for \$379.99. This brings the total paid to \$817.58; however, the landlord claimed the "pre-tax amount" for each of these services. The carpet cleaning includes "pet deodorizing." In their evidence, the landlord provided images of ceiling tile damages.

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 claim is for three separate amounts: recovery of rent amounts; agency costs; and cleaning 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.

I find as fact that the tenant abandoned the rental unit as the landlord presented in the hearing. The landlord provided evidence in the form of cleaning and maintenance receipts, as well as a receipt for the agency they hired to ensure new tenants would enter. This was at the start of July 2021. From this evidence, I find it more likely than not that the tenant did not stay for the full month of July, as they had advised the landlord they would in their notice dated June 29, 2020.

Further, the landlord gave detail on how the tenant normally paid by e-transfer. This did not occur on the due date for rent in July according to the landlord's affirmed testimony. Based on this evidence, I find it more likely than not that the landlord did not receive July rent. Therefore, I grant the landlord \$2,000 for the month of July 2021 rent.

I am not satisfied that a damage or loss exists for the need for having a 3rd party agent find new tenants. The landlord spoke to this in their testimony; however, I am not satisfied it is a loss for which the tenant should bear the cost. There is no evidence of a breach to either the *Act*, the regulations, or the tenancy agreement. There is no evidence of what the landlord provides as the tenant's interference. Further, I find it difficult to accept that hiring a 3rd party agent is the landlord mitigating the loss for this. This portion of the landlord's claim is dismissed.

Finally, I am not satisfied that a damage or loss for the landlord exists with respect to the need for cleaning. The landlord provided images of damaged ceiling tiles; aside from this there is no evidence to show the need for deeper cleaning. There is also no evidence of an inspection – either with or without the tenant – that would attest to the condition of the unit at the end of the tenancy. For this, I am not satisfied of actual damage or loss.

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 \$1,000. I order this amount deducted from the total of the rent amount out above. Reducing the total by \$1,000 brings the total monetary order to \$1,000. Applying the security deposit to an amount owing is permissible by s. 72(2)(b) of the *Act*.

Given that the landlord was moderately successful in their Application, I grant one-half of the Application fee. This is \$50.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,050 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: August 30, 2021

Residential Tenancy Branch