



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacGregor Realty & Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail to the Tenant’s forwarding address on April 1, 2021 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Hearing Package on April 6, 2021. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on September 1, 2018. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit. Rent of \$3,000.00 was payable on the first day of each month. The tenancy agreement includes a signed form K with copies of the Strata rules attached. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. The Tenant moved out of the unit on February 17, 2021 after the Landlord obtained an order of possession based on a one month notice to end tenancy for cause. The Parties mutually conducted a move-out inspection with a report completed and provided to the Tenant. The Tenant did not agree with the report and did not sign the report. The Landlord received the Tenant's forwarding address on March 18, 2021.

The Landlord states that the Tenant owes unpaid rent of \$2,400.00 for February 2021 and claims this amount.

The Landlord states that Tenant breached the Strata rules by operating an Airbnb in the unit. The Landlord claims the fine of \$2,000.00. The Landlord provides a copy of the fine letter from the Strata and has paid the Strata for this amount.

The Landlord states that the Tenant left the floors damaged by scratches. The Landlord provides a photo of the damaged area. The Landlord claims \$1,974.00 as the estimated cost to refinish all the flooring. The Landlord has not repaired the floors and rented the unit to another Tenant for a move-in date of March 27, 2021 with rent of \$3,300.00.

The Landlord states that the Tenant is required under the tenancy agreement to pay for utilities. The Landlord states that the Tenant failed to pay for hydro costs and claims \$999.77. The Landlord provides an invoice for this cost.

The Landlord states that the Tenant failed to leave the unit clean and claims the cleaning costs of \$340.00. The Landlord provides an invoice dated March 8, 2021 and a copy of the move-out report.

The Landlord states that the Tenant left the living room blinds damaged and claims the replacement costs of \$380.80. The Landlord provides an invoice. The blinds were new in September 2018.

The Landlord states that the Tenant left the ceiling paint stained and damaged by screw holes. The Landlord claims \$498.75 as the costs to patch and paint the ceiling. The Landlord provides an invoice.

The Landlord states that the Tenant left the deck dirty and claims cleaning costs of \$94.50. The Landlord provides an invoice. No photos were provided.

The Landlord states that the Tenant was given two fobs at the onset of the tenancy and paid a fob deposit of \$200.00. The Tenant failed to return a fob and the Landlord claims \$100.00. No amount of the fob deposit was returned. The fob is the only means for entry into the building containing the unit.

Analysis

Section 6 of the Regulations provides that

(1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

(a) refundable upon return of the key or access device, and

(b) no greater than the direct cost of replacing the key or access device.

(2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.

Based on the Landlord's own evidence that the fob was the Tenant's sole access to the property containing the unit I find that the Landlord was not allowed to collect the \$200.00 fee. Further there is no evidence that the \$100.00 claimed for the fob is the direct cost of replacing the fob. For these reasons I dismiss the claim for \$100.00 and order the Landlord to return the \$200.00 to the Tenant.

Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. No further rents are payable after a tenancy ends. Lost rental income may be claimed where the Tenant has breached the tenancy agreement or Act causing the loss. Based on the Landlord's evidence that the Landlord ended the tenancy I find that the Landlord has not substantiated any breach by the Tenant beyond the move-out date that I consider to be overholding. I find that the Landlord is therefore only entitled to rent for the period February 1 to 17, 2021 inclusive in the amount of **\$1,821.38**. I calculate this amount based on a per diem rate of \$107.14 x 17 days.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the Landlord's undisputed evidence of the tenancy agreement including form K, the Strata breach and supporting evidence of the fine, I find that the Landlord has substantiated an entitlement of **\$2,000.00**. Based on the Landlord's undisputed evidence of the tenancy agreement that does not provide for utilities with the rent, the undisputed evidence of unpaid utilities and the copy of the utility invoice I find that the Landlord has substantiated an entitlement to **\$999.77**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding

party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the Landlord's evidence that no costs were incurred to repair any damages to the flooring, no other losses were sustained, and considering that the photos show minor damage, I find that the Landlord has not substantiated that the costs claimed were incurred. I therefore dismiss the claim for refinishing the flooring. Given the undisputed evidence of the unit not being left clean and the invoice for the cleaning costs I find that the Landlord has substantiated its claim to **\$340.00**. Given the undisputed evidence of the damage to the blinds and the invoice showing the costs incurred to replace the blinds I find that the Landlord has substantiated its claim to the replacement costs of **\$380.80**. Based on the undisputed evidence of damage to the ceiling and the invoice showing the costs to repair the ceiling I find that the Landlord has substantiated its claim to the repair costs of **\$498.75**. As a landlord is responsible for maintaining the exterior of the unit, as there are no photos of the deck and as the move-out inspection report notes only a dirty exterior, I find that the Landlord has not provided sufficient evidence that the Tenant left the deck damaged beyond reasonable wear and tear. I dismiss the claim for costs to clean the exterior deck.

As the Landlord's claims have met with substantial success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,140.70**.

Deducting the security deposit plus zero interest of **\$1,500.00** plus the **\$200.00** fob deposit from this entitlement leaves **\$4,440.70** owed by the Tenant.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$1,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,440.70**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the Act.

Dated: September 8, 2021

Residential Tenancy Branch