



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$3,150 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing was reconvened from a hearing on May 28, 2021. I adjourned that hearing and ordered that the tenant be served substitutionally (via text message). I issued an interim decision that date, in which I ordered that the landlord serve the tenant no later than June 4, 2021. However, due to an administrative delay, the landlord did not receive the interim decision until June 8, 2021. The landlord served the decision and required documents on the tenant that day, in accordance with the method I set out in the interim decision. He submitted screenshots to corroborate this.

I find that, notwithstanding the fact that the required documents were served after the deadline set out in my interim decision, the tenant has received the required documents. Per section 71(2) of the Act, I find that the tenant has been served in accordance with the Act. The delay in serving the required documents was not attributable to any fault of the landlord and, upon receiving the interim decision, the landlord acted promptly to comply with it to the best of his abilities. It would be unfair to punish the landlord for things outside of his control. The tenant suffered no prejudice as a result of the slight delay in being served with the required documents.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:48 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$3,150;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2021. Monthly rent was \$1,500 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$750, which the landlord continues to hold in trust for the tenant. The tenant vacated the rental unit on July 16, 2021, without notice to the landlord. She did not provide a forwarding address.

The landlord testified that the tenant did not pay January 2021 rent. He testified that the tenant caused significant damage to the rental unit during the short time she lived there. The landlord did not enter a move-in condition inspection report into evidence. He testified that he did not complete one with the tenant, despite requesting that the two of them meet to make one on multiple occasions. He submitted a letter dated December 16, 2021 where he asked that the tenant to "arrange a date and time with [the landlord] so that [the tenant and the landlord] can fill out the condition inspection report RTB - 27 form. If, [the tenant does] not arrange a date and time for condition inspection report RTB-27 form to be filled out together within a week from today [the landlord] will have to proceed otherwise."

The landlord testified that the tenant never contacted him to complete the condition inspection report.

The landlord testified that, upon inspecting the rental unit after the tenant abandoned it, he discovered that the tenant had caused significant damage to the rental unit including:

- Multiple holes small holes on the ceiling of the rental unit (which appeared to have been caused by banging the broom handle against it);
- A broken key inside the front door lock;
- Broken window blinds in the living room and master bedroom;
- Three fire alarms damaged or removed;
- Damaged to the cover on the bedroom baseboard heater;
- Damaged to the mesh window covering in the master bedroom;
- Damaged master bedroom closet door;
- Damage shower doors and caulking removed from bathroom; and

- Damaged master bedroom door knob.

The tenant also left garbage and discarded furniture inside and outside the rental unit. He testified that the rental unit smelt “terrible”.

The landlord submitted photographs into evidence corroborating his testimony as to the condition of the rental unit.

The landlord testified that he engaged a contractor to repair the damage. The contractor charged the landlord \$1,650 for these repairs. The landlord submitted a copy of the invoice into evidence which shows a breakdown of the work done:

Description	Amount
Broken front door lock change	\$150.00
Broken window blind of living room repair	\$100.00
Damaged ceiling of living room and damaged hallway wall repair	\$350.00
Bathroom sink silicone cocking Broken rail and wheel of bathroom glass door repair	\$150.00
Broken smoke alarm for the unit need to change whole house smoke alarms no 3	\$200.00
Broken heater cover of second bathroom repair	\$75.00
Damaged closet door of mater bedroom repair	\$50.00
Damaged window screen of master bedroom change	\$200.00
Damaged window blind of master bedroom repair	\$100.00
Shifted door lock of master bedroom fixing	\$75.00
In-depth cleaning of whole unit to remove stinky smell	\$200.00
Total	\$1,650.00

[as written]

Analysis

1. Non-Payment of Rent

I accept the landlord’s uncontroverted testimony that the tenant failed to pay any part of January 2021 rent. I find that the tenant as obligated to pay monthly rent of \$1,500. As such, I order that she pay the landlord this amount.

2. Damage to Rental Unit

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish

that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must:

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant breached section 37(2) of the Act, the landlord suffered a quantifiable loss as a result of this breach, and the landlord acted reasonably to minimize the loss.

Based on the photographic evidence provided by the landlord, and his undisputed testimony, I find that the tenant damaged the rental unit as described by the landlord, and that this damage represents a breach of section 37(2) of the Act.

I come to this conclusion despite the lack of a move-in condition inspection report. I accept the landlord's testimony, as corroborated by the December 16, 2020 letter, that the reason one was not prepared was due to the tenant's failure to respond to the landlord's requests for one to be done.

I must note, however, that section 23(2) of the Act requires a landlord to give a tenant two opportunities for the inspection "as prescribed". "As prescribed" means that the way the opportunities must be given are set out in the *Residential Tenancy Regulation* (the "**Regulation**"). Section 17 of the Regulation states:

Two opportunities for inspection

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

The landlord did not give a second opportunity for an inspection in the approved RTB form. Additionally, he did not propose a specific date or time for the inspection to occur. Rather, he left it to the tenant to propose a date and time.

As such, I do not find that the landlord complied with section 23(2) of the Act. Accordingly, pursuant to section 24(2)(c) of the Act, I find that the landlord's right to claim against the security deposit is extinguished. In some instances, the extinguishment of a right to claim against a security deposit may cause a landlord to suffer a penalty pursuant to section 38(6) of the Act (and pay the tenant double). This is not the case in this instance as: the tenant has not given a forwarding address, so the landlord's time to bring a claim has not yet started to run; and the landlord has claim for lost rent in addition to compensation for damages (and as such, I could still allow him to retain the deposit pursuant to section 72(2) of the Act).

In any event, despite the fact that the landlord's right to claim against the security deposit is extinguished, I still accept his undisputed testimony that the rental unit was damaged by the tenant during the tenancy as he has alleged.

As a result of this damage, I find that the landlord suffered a monetary loss of \$1,650, representing the amount he paid a contractor to repair it. I find that this amount is reasonable, given the extent of the damage to the rental unit.

As such, I order that the tenant pay the landlord this amount.

3. Filing Fee and Security Deposit

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit (\$750) in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$2,500, representing the following:

Description	Amount
January 2021 Rent	\$1,500.00
Cost of repairs	\$1,650.00
Filing Fee	\$100.00
Security Deposit Credit	-\$750.00
Total	\$2,500.00

For the same reasons as those set out in my May 28, 2021 interim decision, I order that, no later than seven days after receiving this decision and attached order from the Residential Tenancy Branch, the landlord serve the tenant with a copy of these documents via text message to the tenant's phone number listed on the cover of this decision.

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: September 27, 2021

Residential Tenancy Branch