



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, compensation for damage, and for 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 November 2, 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.

Preliminary Matter – service to the tenant

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 described how they obtained an order for substituted service from this office, on May 12, 2021. This authorized the landlord to use the tenant’s email as a verified method of service. The landlord then provided that they served the Notice of this hearing, as well as their prepared evidence, on the same day they received that email authorization.

I accept the landlord’s testimony that the hearing material was sent via email. 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)(f) of the *Act*, and thus s. 43(2) of the

Residential Tenancy Regulation. After reviewing this with the landlord, I am satisfied the landlord advised the tenant of this hearing in due course. The hearing proceeded in the tenant's absence.

Issues to be Decided

- Is the landlord entitled to a monetary order for recovery of rent, and/or compensation for damage, and/or other money owed, 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. The tenant signed the agreement on May 31, 2019, and the landlord signed the document on June 1, 2019. This was for the tenancy that started on June 1, 2019. The monthly rent amount was \$1,518, payable on the 1st of each month. The tenant paid an initial security deposit of \$759, and a pet damage deposit of \$200. The agreement shows that each time a rent payment is behind the scheduled payment date of the 1st of each month, a \$25 fee is imposed. Additionally, the landlord charged a cheque NSF charge of \$8.50.

The agreement contains standard terms regarding 13. 'care of premises & other items' and 14. 'maintenance costs'.

The tenancy ended on February 28, 2021. The landlord had previously issued a 10-Day Notice to End Tenancy for Unpaid Rent that specified the date of February 17, 2021 for the tenant to be out of the unit. The landlord completed a Condition Report based on their inspection of the rental unit on March 3. The tenant was not present for that inspection meeting and did not sign the document. The landlord listed "4 hours cleaning", "\$75 dump run for boxspring and garbage", and a "\$25 hydro fee". The room-by-room details show "patch & paint" throughout, "loose cabinets", broken shelf", and laundry room flooring "covered in clothes and feces."

Accompanying the Condition Report in the landlord's evidence is a document titled 'Tenant Invoice', showing a total amount of \$4,333.22. This shows the following listed items:

- \$2,404 for overdue rent. The landlord provided a ledger that shows this amount listed as the outstanding balance on February 2. This is the calendar month in which the tenancy ended on February 28. The tenant left this balance of accumulated overdue rent unpaid.
- \$1,518 for rent lost revenue. Because the tenant overstayed in the rental unit until February 28 (instead of February 17), the landlord was not able to attend to repairs and other general damage in the unit until early March, and thus was not able to re-rent the unit for that March calendar month. This is the equivalent of one month's rent, at the rent amount the tenant was paying.
- \$202.42 for hydro admin fee (\$25) and a hydro charge outstanding. The landlord showed the BCHydro invoice for the billing date February 1, 2021, due by February 23.
- Repairs for \$1,726.80. The landlord provided a series of photos that show the need for repairs throughout, including carpeting. The details on the 'Tenant Invoice', as it relates to the Condition Report, are:
 - \$504 for outside contractor carpet install
 - \$495.60 for carpets
 - \$129.70 for interior doors
 - \$500 for suite repaint
 - \$75 for garbage removal
 - \$5 for shop materials
 - \$5 maintenance admin fee
 - \$12.50 maintenance labour

On the 'Monetary Order Worksheet' the landlord prepared especially for this hearing, they showed the amount of the deposits as \$979. In the hearing, they explained this includes a \$20 parking tag fee. This is another form of deposit for that individual vehicle id tag showing that parking was authorized at the building.

Adding a \$100.00 Application filing fee for this hearing, the total amount of the landlord's claim is \$5,951.22.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish **all** of 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 identifies three separate areas: recovery of rent amounts; utility amounts; and repair 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.

The *Act* s. 46(5) provides that a tenant who receives a 10-Day Notice to End Tenancy for Unpaid Rent who does not pay rent or apply to dispute is a) conclusively presumed to have accepted that the tenancy ends on the date indicated, and b) must vacate by that date.

Here, the tenant did not vacate until February 28. In addition to the landlord attesting to this in the hearing, the final inspection report is dated March 3. I find as fact the tenant did not move out from the unit until February 28. I accept the landlord's evidence that the tenant, by overstaying, led to the landlord's loss of rent income for the following month. This is an unreasonable cost for the landlord to bear, and stems from the tenant's breach of s. 46(b). I so award \$1,518 to the landlord.

With the ledger, the landlord showed the precise accumulation of rent through to February 2021, the last month of the tenancy. I find as fact these amounts are more likely than not accurate, even to the last cent. I so award \$2,404 to the landlord for this piece of their claim.

I find the \$25 cost associated with the remaining BC Hydro amount was not set out clearly in the tenancy agreement. The origin of this charge is not set out therein; clause 3 of the agreement refers to a late charge for rent at \$25, but not utilities. There is no award for this amount.

The BCHydro bill shows the billing date of February 1, 2021. This shows the rental unit address. From this, I find as fact there was a utility amount left owing by the tenant. This is the amount \$177.42, so awarded.

On repairs, 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.

To assess amounts for damages in the rental unit, I find as follows:

- Though they provided proof of the need for work on the carpets in the form of photos, and indicated this on the Condition Report, the landlord did not provide proof of the actual cost to them. There were no invoices in the landlord's evidence for work completed. Additionally, there is no evidence of any effort to clean the carpets prior to their replacement, nor any expectation to the tenant for this. I find carpet cleaning is not presented here, considering the apparent age of the carpets in the rental unit. Because the landlord did not prove the value of the costs to them, I deny this portion of the landlord's claim.
- Similar for the work on the interior doors, there is no evidence of the true cost to the landlord in the form of receipts. There are pictures of broken drawers and shelves; however, no evidence of broken interior doors aside from what appears to be a door handle/knob. I am not satisfied the cost claimed represents the true value of the work needed for that individual piece.
- Though indicated in the Condition Report, there is no photo evidence of the need for painting within the unit, and no information on which portions (or all) of the rental unit needed paint. There are no invoices to show the cost thereof. I make no award for this portion of the landlord's claim.
- Similarly, there is evidence of the need for debris disposal. I find \$75 is a reasonable approximation of what is shown in the pictures provided. I award this portion of the landlord's claim.
- I find no evidence of the need or origin for: \$5 shop materials; \$5 maintenance admin fee; or \$12.50 maintenance labour. I make no award for these parts of the landlord's claim.

The landlord has properly made a claim against the security deposit and have the right to do so. I find the amount of the deposits, as authorized by the *Act*, is \$959. The landlord is holding this amount. I order this amount deducted from the total of the rent and utilities and damages. Reducing the total of \$4,174.42 by \$959 brings the total monetary order to \$3,215.42. 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 \$3,315.42 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: November 3, 2021

Residential Tenancy Branch