



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, CNR (tenant);**
 OPM, MNRL-S, FFL, MNDL, MNDCL (landlord);
 OPR-DR, MNR-DR, FFL (landlord)

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with two applications by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent

("Ten-Day Notice ") pursuant to sections 46 and 55;

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- An order of possession under a Mutual Agreement to End Tenancy ("Mutual Agreement") pursuant to section 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended with agent AH ("the tenant"). The landlord attended. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The tenant acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. The hearing process was explained.

Preliminary Issue – Evidence Service

The landlord acknowledged that a Decision for Substituted Service dated October 18, 2021 was not received by the landlord and accordingly she did not serve the tenant pursuant to the terms of the Order. The landlord acknowledged that she did not know how to contact the tenant who vacated the unit on September 3, 2021 without providing a forwarding address. As the tenant was not served with evidence submitted by the landlord after September 1, 2021, no such evidence is considered by the Arbitrator.

Preliminary Issue – Recording

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Both parties testified they were not recording the hearing.

Preliminary Issue - Disconnection by Tenant from Hearing

I repeatedly warned the tenant not to interrupt the landlord and me during the hearing. At 11:40 AM, 40 minutes after the hearing commenced, the tenant said she was "done with this fucking phone call" and disconnected. The tenant did not reconnect. The

hearing resumed and concluded at 11:48 AM with only the landlord and me present.

Preliminary Issue – Vacancy

The parties agreed the tenant vacated the unit in early September 2021. Accordingly, the landlord withdrew the request for an Order of Possession.

As the tenant has vacated the unit, the tenant's application is dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, authorization to apply the security deposit to any award, and reimbursement of the filing fee?

Background and Evidence

This is a claim by the landlord for compensation for outstanding rent and damages allegedly caused by the tenant. The tenant denied responsibility for any damage or the total amount of the outstanding rent and requested reimbursement of the deposits.

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Tenancy Background

The parties submitted a copy of the tenancy agreement which was entered into between the parties and a co-tenant who vacated the unit before the tenant.

The landlord testified as to the following background to the tenancy:

INFORMATION	DETAILS
Type of tenancy	1-year fixed term
Date of beginning	April 1, 2020
Date of ending	September 2021

Security deposit	\$850.00
Pet deposit	\$725.00
Forwarding address provided	no

The tenant did not dispute the background as set out above.

The landlord clarified the claim for outstanding rent as follows:

ITEM	AMOUNT
Rent outstanding July 2021	\$877.50
Rent outstanding August 2021	\$1,700.00
TOTAL CLAIM RENT	\$2,577.50

The landlord testified the tenant vacated without notice leaving the unit requiring cleaning; as well, the tenant did not return the keys to the landlord. The landlord claimed reimbursement of the following expenses:

ITEM	AMOUNT
Cleaning and garbage removal	\$262.00
Locksmith expense	\$436.54
TOTAL CLAIM - DAMAGES	\$698.54

The landlord testified that in the circumstances of the tenant moving out without notice, no condition inspection was conducted on moving out.

The landlord requested the security deposit and pet deposit be applied to any award as and that an award be made for reimbursement of the filing fee as follows:

ITEM	AMOUNT
Rent outstanding (above)	\$2,577.50

Damages (cleaning, locksmith – above)	\$698.54
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$850.00)
(Less pet deposit)	(\$725.00)
TOTAL CLAIM	\$1,801.04

Prior to leaving the hearing before its completion, the tenant stated that she is only responsible for half the rent as the tenancy agreement was with two tenants. She also claimed that she did not abandon the property and intended to clean as well as return the keys.

The landlord testified that the tenant provided no forwarding address or contact instructions. The landlord testified she found the unit vacated in early September 2021, assumed the tenant had moved out, attempted to call the tenant but the number was no longer working, and changed to locks to protect the property.

The landlord requested a Monetary Order of **\$1,801.04**. The tenant requested the landlord's claim be dismissed.

Analysis

Each party submitted substantial conflicting evidence. Only relevant, admissible evidence is considered. Key facts and findings are referenced.

1. Credibility

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered.

After reviewing the admissible evidence (as served upon the parties in compliance with the Act) and hearing the testimony, I find the landlord's evidence to be credible and reliable. I give significant weight to the landlord's evidence and version of events.

2. Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* states that 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. It is up to each party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find the landlord has met the burden of proof with respect to the claims as set out below.

3. Four-part Test

When an applicant, the landlord in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

4. *Cleaning*

The obligations of the parties are set out in the Act and clarified in *Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises*.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred the amount claimed in cleaning and disposal expenses, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

Before the tenant withdrew from the hearing, the tenant claimed the landlord prematurely changed the locks on the unit, effectively making it impossible for the tenant to return to clean. The landlord testified that the tenant did not provide notice she was moving out and provided no forwarding address or contact particulars. The landlord testified she found the unit vacated, assumed the tenant had moved out, attempted to call the tenant but the number was no longer working, and changed to locks to protect the property.

I find the landlord's testimony credible and the landlord's conclusions reasonable. I find the landlord acted prudently to protect the unit and was justified in concluding the tenant had abandoned it without notice. I find the landlord properly changed the locks, cleaned the unit, and got it ready to rent again.

I accept the landlord's testimony that the landlord paid a cleaner \$250.00 and paid to disposal fees of \$12.00.

I therefore find the landlord has met the burden of proof with respect to all parts of the 4-part test. I allow the landlord's claim as requested.

5. *Outstanding Rent*

The landlord testified the fixed term tenancy ended on July 31, 2021, the tenant did not pay all the rent for July and none for August 2021. The tenant was overholding without the permission of the landlord, did not serve written notice to end the tenancy and occupied the unit until early September 2021. The tenant acknowledged that she did not pay all the rent for July and did not pay any rent for August 2021.

The tenant acknowledged the amount owing but denied responsibility as there was a co-tenant; further, the tenant stated that she attempted to transfer the rent for August 2021 in full.

As provided in *Policy Guideline 13 – Rights and Responsibilities of Co-tenants*, when there is a co-tenant, each tenant is responsible to assure the rent is paid each month. Therefore, I find the tenant is responsible for the outstanding rent as claimed.

I find the landlord has met the burden of proof with respect to all parts of the 4-part test.

I accordingly allow the landlord reimbursement of outstanding rent as claimed.

6. *Filing fee*

As the landlord has been successful in the landlord's claim, I grant the landlord a monetary order in the amount of \$100.00 as reimbursement of the filing fee.

7. *Deposits*

Further to section 72, I authorize the landlord to apply the security deposit and pet deposit to the award.

8. *Summary of Award*

I grant the landlord a monetary order in the amount of **\$1,801.04** summarized as follows:

ITEM	AMOUNT
Rent outstanding (above)	\$2,577.50

Damages (cleaning, locksmith – above)	\$698.54
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$850.00)
(Less pet deposit)	(\$725.00)
TOTAL Monetary Order	\$1,801.04

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,801.04**. This Order must be served on the tenant.

If the tenant fails to comply with this Monetary Order the landlord may file the Monetary Order in the Provincial Court (Small Claims) to 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 01, 2021

Residential Tenancy Branch