



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

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and his counsel, C.S. (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via email on June 2, 2021. The landlord clarified that the email service was as a result of being granted an order for substitute service to serve the tenant via email. The landlord further clarified that two emails were sent to the tenant which contained the Notice of Hearing Package and the submitted documentary evidence on the same date. The landlord also referenced submitted copies of both emails as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the notice of

hearing package and the submitted documentary evidence as per the order for substitute service dated May 17, 2021 via email. Despite not attending or submitting any evidence the tenant is deemed served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for compensation for loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on October 20, 2019 on a fixed term tenancy ending on October 31, 2021 as per the submitted copy of the signed tenancy agreement dated October 18, 2019. The monthly rent was \$3,000.00 payable on the 1st day of each month. A security deposit of \$1,500.00 was paid.

The landlord seeks a monetary claim of \$22,288.55 which consists of:

\$3,413.00	Compensation, \$413.00 Strata Bylaw Fine(s) \$3,000.00 Damage(s), Loss of Rental Income
\$18,000.00	Unpaid Rent, April 2020 to September 2020 6 months at \$3,000.00/month
\$775.55	Maintenance/Repair Cost(s)

The landlord provided undisputed affirmed evidence that the tenancy ended on October 11, 2020 when the landlord realized the tenant had abandoned the rental unit. The landlord stated that a Notice of Final Opportunity was served to the tenant for October 1, 2021 from which the landlord stated that he received a confirmation email from the tenant that he would not be participating in.

The landlord stated that at the end of the tenancy the landlord found via a Strata statement of account that the tenant had incurred \$413.00 in strata bylaw fines. The

landlord stated the tenant signed in agreement the strata form "K" agreeing to abide by the strata bylaws. The tenant failed to pay the \$250.00 strata move-in fee; \$100.00 strata amenity fee; and \$63.00 for two \$31.50 NSF charges. The landlord stated all charges were noted on the referenced copy of the strata statement of account submitted.

The landlord stated that the tenant vacated the rental unit leaving it dirty and damaged requiring cleaning and repairs. The landlord referred to photographic evidence submitted showing the condition of the rental unit at the end of tenancy in contrast with the submitted copy of the completed condition inspection report for the move-in dated October 20, 2019. The landlord also relies upon the submitted copy of the incomplete condition inspection report for the move-out which the landlord completed alone after a Notice of Final Opportunity was served to the tenant. The landlord referenced a missing smoke detector, missing towel hangers and that the tenant failed to return the keys or the key fobs to the rental property. The landlord stated that all these items had to be replaced and repairs made to allow the landlord to re-rent the unit. The landlord also clarified that the unit was then sold and not re-rented. The landlord stated that copies of all invoices/receipts were submitted save and except for the \$200.00 cleaning claim for which the landlord stated was required due to the condition of the rental unit at the end of tenancy. The landlord stated that the cleaning claim was paid via cash for cleaning services. The landlord referenced the submission of 26 photographs showing the condition of the rental unit which required cleaning and repairs. The landlord stated because of these issues the landlord was not able to re-rent the unit as the tenant failed to provide proper notice to end the tenancy. The landlord suffered the loss of rental income equal to 1 month for October 2020 for \$3,000.00.

The landlord also stated that the tenant failed to pay rent for the period April 2020 to September 2020 at \$3,000.00 per month for 6 month period totalling, \$18,000.00. The landlord referred to copies of emails between the two parties one of which is dated August 3, 2020 regarding unpaid rental arrears. The landlord stated that as of the date of this hearing no rent has been paid by the tenant for this period of time.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that the landlord has established a claim for unpaid rent; damages for loss of rental income; outstanding strata fees due to the tenant and damages for repairs and missing items for the total claimed of \$22,188.55.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,500.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$20,788.55.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I also order pursuant to the landlord's request to serve the tenant via email with this order as per the substitute service order dated May 17, 2021.

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 1, 2021

Residential Tenancy Branch