



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **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 damage to the rental unit in the amount of \$1,015 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:52 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's property manager ("**JL**") 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 JL and I were the only ones who had called into this teleconference.

JL testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on May 20, 2021. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenant is deemed served with this package on May 25, 2021, five days after JL mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,015;
- 2) recover the filing fee; and
- 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 JL, not all details of her 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 tenancy agreement starting April 13, 2017. Monthly rent was \$1,066 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant. The parties conducted a move-in inspection at the start of the tenancy. A copy of the move-in report was entered into evidence.

JL testified that the landlord obtained an order of possession dated April 16, 2021 against the tenant for non-payment of rent pursuant to an *ex parte*, direct request proceeding. The order of possession was effective two days after it was served on the tenant. JL testified that the landlord allowed the tenant to remain in the rental unit for a few additional days so that he could fully move his possessions out of the rental unit. The tenant was to have been fully vacated on April 26, 2021.

JL testified that when she agreed to allow the tenant to stay in the rental unit a few days past the effective date of the order of possession, she advised the tenant that she would attend the rental unit on April 26, 2021 (the date by which the tenant had to be vacated from the rental unit) to conduct a move out inspection. The tenant raised no objection to this.

On April 26, 2021, JL attended the rental unit at 9:00 am and discovered that the tenant had abandoned the rental unit. She testified that the tenant left garbage in all of the rooms of the rental unit, food in the refrigerator & pantry, furniture on the patio, and a large number of miscellaneous belongings in the hallway closet.

Additionally, JL testified that the tenant failed to clean the rental unit. There was dirt throughout the rental unit and in its appliances. She testified that much of the rental unit was nicotine-stained. The landlord submitted photos which corroborated JL's testimony.

JL completed a move-out inspection without the tenant on April 26, 2021. It recorded the condition of the rental unit as indicated above.

JL also testified that the entire rental unit smelled strongly of cigarette smoke. She testified that the entire building was a no-smoking building but conceded that the tenancy agreement is silent as to whether smoking is permitted in the rental unit. She noted that a few occupants of the residential property began their tenancies prior to this policy being instituted, and that these tenants have been "grandfathered in". However, she testified that the tenant is not one of these occupants.

JL testified that the landlord suffered a monetary loss in the amount of \$1,015 due to the condition that the tenant left the rental unit, representing the following:

Description	Amount
Garbage removal	\$375
Ozone treatment	\$495

Cleaning	\$145
Total	\$1,015

The landlord submitted invoices for the garbage removal and the ozone treatment. JL testified that the ozone treatment was necessary to partially remove the cigarette smell from the rental unit. She testified that the smell was so strong after the tenant vacated that the landlord was unable to re-rent the rental unit. She testified that roughly a month after the ozone treatment was completed, the landlord was able to re-rent the rental unit.

The landlord did not submit an invoice to support the landlord's claim that it incurred \$145 in cleaning costs. However, JL testified that the landlord has a standing agreement with a cleaning company, who charges a base rate of \$145 to clean a one-bedroom rental unit. She testified that the cleaners needed to be paid an additional \$105 (based on a rate of \$35/hour for three hours) to complete the cleaning, due to the state of the rental unit, but that the landlord is not seeking to recover that amount.

Analysis

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)(a) 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

So, the landlord must prove it is more likely than not that the tenant breached section 37 of the Act, that the landlord suffered a quantifiable loss as a result, and that the landlord acted reasonably to minimize its loss.

Based on the photographic evidence submitted and JL's undisputed testimony, I find that the tenant left the rental unit in a significant state of disrepair: he failed to adequately clean the rental unit prior to leaving; he failed to remove personal belongings including food, furniture, and garbage from the rental unit prior to leaving. This amounts to a breach of section 37 of the Act.

I accept JL's undisputed testimony that the rental unit smelt strongly of cigarette smoke at the end of the tenancy and that the residential property is a non-smoking building, notwithstanding the absence of reference to this rule in the tenancy agreement. I find that leaving the rental unit with a strong odor of cigarette smoke amounts to failing to leave the rental unit in a reasonably clean state, which is a breach of section 37 of the Act.

Based on the invoices submitted and on JL's undisputed testimony, I accept that the landlord suffered a monetary loss of \$1,015 for cleaning the rental unit, removing the garbage and furniture from the rental unit, and for an ozone treatment to remove the smell of cigarette smoke. In the circumstances, I find that all of these expenses were reasonably necessary to address the tenant's breaches of the Act. As such, I find the landlord acted reasonable to minimize its loss.

I order that the tenant pay the landlord \$1,015 in satisfaction of this monetary loss.

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit 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 \$615, representing the following:

Description	Amount
Garbage removal	\$375
Ozone treatment	\$495
Cleaning	\$145
Filing fee	\$100
Security deposit credit	-\$500
Total	\$615

I order the landlord to serve the tenant with a copy of this decision and attached monetary order as soon as reasonably possible after receiving it from the Residential Tenancy Branch.

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 8, 2021

Residential Tenancy Branch