



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL-S

Introduction

This hearing dealt with a landlord's application for monetary compensation for unpaid rent; losses for damage and cleaning; and, authorization to retain the tenant's security deposit.

The landlord's agent appeared at the hearing and was affirmed. There was no appearance on part of the tenant. Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord submitted that the proceeding package and evidence was sent to the tenant at his forwarding address via registered mail on July 29, 2021. A search of the registered mail tracking number showed that the registered mail was delivered on August 9, 2021. I was satisfied the tenant was duly served with notification of the landlord's claims and this proceeding. Accordingly, I continued to hear from the landlord's agent without the tenant present.

In filing the Application for Dispute Resolution, the landlord indicated it was seeking compensation of \$1,486.25 from the tenant. During the hearing, the landlord's agent stated the landlord was limiting its claim to \$550.00, the amount of the security deposit. I amended the claim accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in an amount equal to or greater than the amount of the security deposit?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on September 15, 2018 with a former landlord. The current landlord acquired the property in 2019. The current landlord does not have a copy of a move-in inspection report.

The tenant paid a security deposit of \$550.00 and the rent was initially set at \$1100.00 payable on the first day of every month.

On May 7, 2021 the tenant gave a notice to end tenancy to the landlord, that included his forwarding address. The notice indicates the tenant was ending the tenancy effective May 31, 2021 due to a “family emergency”. The landlord’s agent testified that in response to receiving the tenant’s notice the landlord informed the tenant he was giving “short” notice and that he was responsible for paying all of May 2021 rent.

The landlord attempted to schedule a move-out inspection with the tenant by phone calls and emails. A *Notice of Final Opportunity to Schedule a Condition Inspection* providing for an inspection set for June 14, 2021 was sent to the tenant by email and posted to the rental unit door.

The tenant left the keys on the counter on May 8, 2021 and the landlord’s agent inspected the rental unit on June 14, 2021 without the tenant present.

The landlord could not explain why the *Notice of Final Opportunity to Schedule a Condition Inspection* was not sent to the tenant’s forwarding address since he had provided one to the landlord.

The landlord’s agent testified that upon inspecting the unit, two interior doors were found to be damaged by holes that appear to be the result of being punched and the unit was not cleaned. Also, a sofa was left behind in the unit.

The landlord commenced a significant \$35,000 renovation of the unit including all new doors, flooring, appliances and the like. The unit was re-rented in August 2021.

In preparing the move-out inspection report and in filing this Application for Dispute Resolution, the landlord had estimated losses of \$200.00 for the damaged doors based on her experience. The landlord acknowledged that the rental unit had all of its doors replaced as part of the \$35,000 renovation project and there was no receipt or invoice to corroborate a loss of \$200.00 for the damaged doors.

The landlord estimated \$60.00 to clean the stove although most of the unit was dirty and required additional cleaning. The landlord acknowledged the stove was replaced as part of the renovation project and there was no cleaning receipt or invoice submitted.

The landlord estimated \$150.00 to remove the abandoned sofa although the landlord acknowledged a receipt or invoice was not submitted in support this amount.

The landlord also applied to recover unpaid and/or loss of rent for the month of June 2021 given the tenant's short notice to end tenancy. Although the landlord did not attempt to re-rent the unit right after receiving the tenant's notice because of the decision to renovate the unit, the landlord's agent argued that between the tenant's short notice and the poor condition in which the unit was left, the unit was not in a condition to be re-rented for June 2021 and it is very unlikely the unit would have been rented for June 2021.

Given all of the above, the landlord is of the position that the landlord's limited claim of \$550.00, the amount of the security deposit, for all of its losses related to this tenancy is reasonable.

As evidence for this proceeding, the landlord provided a copy of the tenancy agreement; the tenant's notice to end tenancy; the *Notice of Final Opportunity to Schedule a Condition Inspection*; the move-out inspection report; photographs of the damaged doors and dirty stove; and, registered mail receipt.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

Upon consideration of all of the unopposed submissions and evidence before me, I provide the following findings and reasons.

Under section 45 of the Act, a tenant is required to give the landlord at least one full month of written notice to bring a periodic tenancy to an end. The tenant gave the landlord a written notice but it provided less than one full month of advance notice. Therefore, I find the tenant violated section 45 of the Act.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage. Further, since awards are restorative, depreciation of the item that is replaced is often taken into account in determining the value of the loss.

Upon review of the photographs of the two doors submitted as evidence, I accept the landlord's position that the tenant is responsible for damaging two doors beyond wear and tear, as evidenced by the large holes in the doors. Therefore, I find the tenant violated sections 32 and 37 of the Act.

Under section 37 of the Act a tenant is also required to leave a rental unit reasonably clean and vacant. Upon review of the photograph of the stove, I accept the landlord's position that the tenant did not leave the rental unit reasonably clean and that additional cleaning would be required. Based on the move-out inspection report and the landlord's undisputed testimony, I also accept the tenant left an abandoned sofa in the rental unit. Accordingly, I find the tenant failed to comply with section 37 of the Act in leaving the unit dirty and an abandoned sofa behind.

The weakness in the landlord's claim surrounds mitigation and establishing the value of the losses. As for mitigation, the landlord scheduled a move-out inspection for June 14, 2021 which is long after the tenant vacated the unit and the landlord did not attempt to re-rent the unit shortly after receiving the tenant's notice and proceeded with a decision

to commence a major renovation. Also, the doors that were damaged appear old and nearing the end of their useful life which suggests they had little value left in any event. Further, the landlord did not provide receipts for cleaning and disposal of the sofa.

Despite my reservations above, given the tenant's violation of the Act in several ways, I accept the landlord's argument that given the tenant's short notice and the tenant's failure to leave the unit undamaged and clean, there were costs associated to removing the sofa and cleaning the unit and the likelihood of re-renting the unit for June 2021 would have been slim. As such, I find the landlord's request to retain the tenant's security deposit, without any opposition from the tenant, to be within reason. Therefore, I grant the landlord's request to retain the tenant's security deposit in satisfaction of any and all losses associated to this tenancy.

Conclusion

The landlord is authorized to retain the tenant's security deposit in satisfaction of any and all losses associated to this tenancy.

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: January 11, 2022

Residential Tenancy Branch