



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 11 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. and ended at 1:41 p.m. I monitored the teleconference line throughout this hearing. 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 the landlord and I were the only people who called into this teleconference.

The landlord's agent confirmed her name, spelling, and provided her email address for me to send this decision to the landlord after the hearing.

The landlord explained that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. She said that the landlord company is the agent for the owner of the rental unit. She stated that she had permission to represent the owner at this hearing.

At the outset of this hearing, I informed the landlord's agent that she was not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on July 22, 2021, by way of registered mail to the forwarding address provided verbally by the tenant over the telephone on July 7, 2021. She claimed that this address was on a copy of the move-out condition inspection report that was provided for this hearing. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. She said that the package was delivered to the tenant, according to the tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 27, 2021, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on December 16, 2019 and ended on June 30, 2021. Monthly rent in the amount of \$750.00 was payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The landlord filed this application on July 7, 2021.

The landlord seeks a monetary order of \$2,005.75 plus the \$100.00 application filing fee.

The landlord's agent stated the following facts. The tenant failed to pay rent of \$750.00 for each month from May to June 2021, totalling \$1,500.00. The tenant owes late rent fees of \$25.00 for each month from May to June 2021, totalling \$50.00. The \$25.00 monthly late fee is indicated in paragraph 13 of the parties' written tenancy agreement addendum. The landlord seeks garbage removal of \$47.25, cleaning costs of \$283.50, and blinds replacement of \$125.00. The landlord provided work orders for the above costs. The landlord would have paid those costs on July 7, 2021. The landlord completed the above work "in-house" through its own company.

Analysis

Rent

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$750.00 for each month from May to June 2021, totalling \$1,500.00. I find that the tenant was living in the rental unit from May to June 2021, and he owes this rent to the landlord. Therefore, I find that the landlord is entitled to \$1,500.00 total in unpaid rent arrears from the tenant.

Late Fees

Section 7 of the *Residential Tenancy Regulation* states the following, in part:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord provided undisputed evidence that the tenant failed to pay late rent fees of \$25.00 for each month from May to June 2021, totalling \$50.00. The \$25.00 fee is indicated in the parties' written tenancy agreement addendum at paragraph 13. Accordingly, I award the landlord \$50.00 total in late fees from May to June 2021.

Damages and Cleaning

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord's agent did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During this hearing, the landlord's agent failed to properly go through the landlord's monetary claims and the documents submitted in support of this application. This hearing lasted only 11 minutes and only the landlord appeared at this hearing, not the tenant. Therefore, the landlord had ample opportunity to present this application.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

I dismiss the landlord's application for garbage removal of \$47.25, cleaning costs of \$283.50, and blinds replacement of \$125.00, without leave to reapply. The landlord's agent did not explain these claims at all during this hearing, despite me asking repeatedly whether she wanted to explain or add any information regarding the above claims.

The landlord only provided work orders with balances due, not receipts to confirm that the above work was done, and the costs were paid by the landlord. The landlord's agent did not review the work orders at all during this hearing. She did not indicate when the landlord had any work done, how many people completed the work, or the hourly rate of any such workers.

The landlord had ample time, prior to this hearing, to provide receipts to confirm the above work was completed and paid by the landlord. The landlord filed this application on July 7, 2021, over 6.5 months prior to this hearing on January 24, 2021.

The landlord's agent failed to reference or explain the move-in or move-out condition inspection reports submitted as evidence for this hearing. I find that the landlord failed to show if any damages were pre-existing when the tenant moved in and which damages the tenant may have caused while living at the rental unit. The landlord's agent did not reference or explain the photographs submitted for this hearing, to show where in the rental unit these damages and cleaning were required. The landlord's agent did not explain why the tenant did not participate in or sign the move-out condition inspection report.

I find that the photographs submitted by the landlord were small thumbnail sizes and do not show the extent of cleaning or damages, as noted by the landlord in this application or the move-out condition inspection report.

The move-out condition inspection report does not indicate any garbage removal was required on the balcony, as noted in the landlord's work order. The move-out condition inspection report does not indicate any notations regarding the condition of the exterior or patio of the rental unit. The landlord's work order states that the patio blinds were replaced but the move-in and move-out condition inspection reports do not indicate anything regarding the condition of the patio blinds.

The landlord did not indicate how the above damages and cleaning were beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1, requiring the tenant to pay for same.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenant.

The landlord continues to hold the tenant's security deposit, totalling \$350.00. No interest is payable on the tenant's security deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$350.00 in partial satisfaction of the monetary award. I issue a monetary order for the balance of \$1,200.00 to the landlord.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$350.00.

I issue a monetary order in the landlord's favour in the amount of \$1,200.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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 24, 2022