



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL MNRL, FFL**

Introduction

This hearing dealt with two applications filed by the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the “landlord”). The tenant represented themselves with assistance from family members.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fees for their applications from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in 2019 and ended on August 31, 2021. The monthly rent was \$4,800.00 payable on the first of each month. The landlord collected a security deposit of \$2,400.00 which is still held by the landlord. A copy of the written tenancy agreement was submitted into evidence. The agreement provides that the tenant is responsible for paying the utilities for the property.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated June 5, 2021 with an effective date of August 31, 2021. There was a previous hearing under the file number on the first page of this decision pertaining to the tenant's application to cancel that 2 Month Notice. At that hearing the parties gave evidence that the tenancy had ended on August 31, 2021 and the presiding arbitrator found no requirement to make a determination on the validity of the 2 Month Notice. The parties agree that the tenants did not pay rent for August 2021 nor the utilities at that time.

The parties agree that \$316.00 of utilities are payable pursuant to the tenancy agreement. The tenant submits they mailed a cheque in the amount of \$316.00 claimed by the landlord on November 11, 2021. The tenant provided a photocopy of the cheque. The landlord testified they have not received any payment as at the date of the hearing.

The landlord claims a monetary award of \$5,116.00 for unpaid rent and utilities.

The parties agree that there was a move-out inspection of the rental property at the end of the tenancy on August 30, 2021. A copy of the report was submitted into documentary evidence. The report shows the condition of the rental property at the start of the tenancy as being deemed mostly "good". The report notes various damage at the end of the tenancy including scratches to hardwood floors, damage to drywall, window sills and wood trimmings, stained carpets, damaged balcony railings and garage doors, and multiple window blinds throughout the property being damaged. The report further provides that the "garden/yard NOT maintained".

The parties did not agree on the assessment of damages and the tenant declined to sign the condition inspection report or provide a forwarding address in writing at that

time. The tenant testified that they had not previously provided a forwarding address to the landlord but provided a forwarding address orally at the hearing.

The landlord submits that as a result of the condition of the rental property they incurred significant costs for repairs, cleaning and maintenance work. The landlord submits a receipt from a third-party company for the work done totaling \$10,290.00 inclusive of taxes.

The landlord also submits that they have incurred losses due to the condition of the outdoor garden and yard which will take considerable expenditure to restore to its pre-tenancy condition. The landlord has obtained several quotes from landscaping companies and based on the estimates the landlord claims the amount of \$16,185.00 for the cost of restoring the outdoor portion of the rental property.

The landlord says that the rental property is now infested with silverfish. The landlord attributes the silverfish infestation to the tenancy and claims that their presence will devalue the property significantly. While the landlord testified that they have no immediate plans to sell the property they claim a monetary award for the amount that the rental property has lost its value due to the presence of silverfish.

The tenant disputes that the rental unit required work and submits that the property was in an acceptable condition. The tenant also submits that there were issues with the window blinds throughout the tenancy and it was reported to the landlord at various times. The tenant further claims that the amount claimed by the landlord is excessive and feels the landlord is purposefully inflating the amount.

The tenant provided into evidence some photographs of the rental unit and the garden in support of their position that they have done no damage. The tenant also submits invoices for gardening to support their position that they have maintained and kept the outdoor area of the rental property in suitable condition.

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.

Section 51 of the Act provides that:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Accordingly, I find the tenant was entitled to withhold the monthly rent for August 2021 pursuant to the Act. I find the landlord's various submissions that the 2 Month Notice was issued as a precaution but the tenancy ended in accordance with the fixed-term tenancy; that the tenant is no longer entitled to compensation as they filed an application to dispute the 2 Month Notice; that the tenancy actually ended due to the fixed-term tenancy to be of little merit. The *Act* is clear that upon receipt of the notice to end tenancy under section 49 the tenant's entitlement to compensation is triggered. I find that the tenant was entitled to withhold the monthly rent for August 2021 and no rent was payable.

The parties confirmed that the tenant is responsible for paying utilities under the tenancy agreement. The parties agreed that the utility arrear is \$316.00. The tenant testified that they agree with that amount and have made an attempt to pay the utility arrear in November 2021. The landlord testified that they have not yet received any payment. As the parties are in agreement that \$316.00 of utilities are payable I issue a monetary award in the landlord's favour in that amount.

Regulation 21 provides that a condition inspection report is evidence of the state of repair and condition of the residential property, unless there is a preponderance of evidence to the contrary.

I find that the condition inspection report is sufficient evidence that the rental unit was in good to fine condition at the start of the tenancy. I do not find the tenant's evidence of a few instances of text message conversations to be sufficient to demonstrate that the rental unit was in poor condition from the outset of the tenancy and throughout. If there were major issues with the property it would be reasonable to expect that there would

have been some correspondence referencing the need for major work. The copies of correspondence merely shows the expected notes about minor issues that are in line with what is noted on the move-in inspection report.

I am satisfied with the evidence of the landlord including the condition inspection report, their testimony, estimates and invoices from third-parties, and copies of correspondence between the parties that the rental unit required some work to restore to its pre-tenancy condition. I accept that the rental unit had various damage and issues requiring the landlord incur costs for repairs, replacement and cleaning. I find the landlord's testimony detailing the condition of the suite and the scope of work done is supported in the documentary materials including invoices and estimates and is commensurate with work performed for the purposes of restoring property to its pre-tenancy condition. I find the description of the work in the documentary materials to be reasonable and in accordance with what would be required given the age and character of the rental property. I am satisfied that the work detailed is for the purposes of restoration and not an attempt to renovate or upgrade the rental unit. I therefore issue a monetary award in the amount claimed of \$10,290.00 for the work done to the rental property.

I find sufficient evidence on the part of the landlord to meet their evidentiary burden on a balance of probabilities to demonstrate that the outdoor portion of the residential property was damaged by the tenancy requiring major work. I find the cogent, detailed testimony of the landlord, the documentary evidence including the condition inspection report, photographs and the correspondence with a professional landscaping company to be sufficient to establish that the yard and garden requires significant expenditure to restore to its pre-tenancy condition.

I find the handful of photographs submitted by the tenant and their protestation that they have maintained the yard to be not be persuasive. I find the tenant's own documentary evidence show dead grass and shrubbery that would reasonably need to be replaced.

I accept the submission of the landlord that they have not yet incurred costs as the tenancy ended in the autumn and restoration efforts could not commence until the spring. I find the landlord's estimate of work based on their correspondence with the professional landscaping company to be reasonable and the details of what is to be done to be restoration of the garden rather than upgrading or renovating. I am satisfied on a balance of probabilities that the landlord incurred losses due to the tenant's failure to maintain the rental property and that the amount of their losses is \$16,185.00. I therefore issue a monetary award in that amount as claimed.

I am not satisfied that the landlord has incurred any losses due to the presence of silverfish. The landlord's central submission on this point is that the rental property will be devalued when it comes time to sell or find a new occupant. I find that the hypothetical losses that the landlord may one day bear when they sell the property is not a loss that may be claimed. Based on the undisputed testimony of the landlord they have not incurred any losses due to the silverfish as they have not sold nor attempted to sell the rental property. The landlord provided no evidence that the presence of silverfish has had any detrimental effect on their occupancy of the property. I find the landlord has failed to establish that there has been any losses and consequently I dismiss this portion of the application.

As the landlord was successful in their application they are entitled to recovery of the filing fee. While the landlord has filed two separate applications, I find no reason why the landlord did not simply file an amendment to their first application and include all claims under one application. I find the landlord's payment of two separate filing fees is due to the landlord's own manner by which they pursued their applications and consequently find it appropriate to issue the recovery of \$100.00 only.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$24,491.00 on the following terms:

Item	Amount
Unpaid Utilities	\$316.00
Damage to Interior of Rental Unit	\$10,290.00
Damage to Outdoor area of Rental Unit	\$16,185.00
Filing Fee	\$100.00
Less Security Deposit	-\$2,400.00
TOTAL	\$24,491.00

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.

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

Residential Tenancy Branch