



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 13, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- 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.

The Landlord was represented at the hearing by two agents (collectively referred to as the Landlord). However, the Tenants did not attend. The Landlord testified that she sent a Notice of Hearing and evidence package to each of the Tenants by registered mail on July 14, 2021. Proof of mailing was provided. The Landlord stated that the Tenants refused to provide their forwarding address in writing to the Landlord, so she followed the Tenants' moving truck to their new residence. The Landlord stated she observed both Tenants move items into this new house, and observed them living there after that point. I accept the undisputed testimony that this is the Tenants' new residence. Pursuant to section 90 and 90 of the Act, I find the Tenants are deemed served with the Landlord's Notice of Hearing and evidence package 5 days after it was sent to their new residence. The Tenants are deemed served on July 19, 2021.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord provided a monetary order worksheet to itemize what she is seeking in this application. The Landlord provided testimony, photos, and receipts for the items. The Landlord also provided a copy of the condition inspection report.

The Landlord stated that monthly rent was \$1,850.00 and was due on the first of the month, and a security deposit of \$925.00 is still held. The Landlord stated that the Tenants moved into the rental unit on February 1, 2020. On August 29, 2020, the Tenants gave the Landlord a letter, stating that they would be moving out that same day. The Landlord stated that they tried to schedule a move out inspection, but the Tenants ignored their requests. The Landlord stated that they posted a Notice of Final Opportunity to Schedule Inspection on the Tenants door that same day, and scheduled the move-out inspection for September 2, 2020. The Landlord stated that the Tenants never showed up, and when the inspection was done, it was clear they had moved most of their belongings out, but not everything.

The Landlord took photos at the move-out inspection. Afterwards, the Landlord contacted the Tenants, and they confirmed they were no longer staying in the unit, as of the first couple days in September 2020. The Landlord stated that the Tenants left behind several items and lots of garbage when they moved some of their belongings out on August 29, 2020. The Landlord stated that the Tenants had informed them that they would not be coming back to clean up, or clear out their garbage, but that they would return to move out a few larger items such as a crib and other furniture which wasn't moved at the end of August.

The Landlord stated that the Tenants refused to return calls and respond to when they would be back to pick up the rest of their furniture. The Landlord stated that this delayed

cleaning and repairs because they had to wait for the Tenants to pick up the rest of their items (crib etc). However, they never did.

The Landlord explained that the Tenants were involved in criminal activity in the rental unit, and left behind lots of drug paraphernalia, illicit drugs, bullets, and other dangerous goods. The Landlord further explained that the Tenants stopped paying rent in April 2020, and also failed to give proper Notice or communicate in a reasonable manner after they left.

As per the Monetary Order Worksheet, there were 11 items in total, as follows:

1. \$9,250.00 – Rent Owed – April – August 2020

The Landlord stated that the Tenants failed to pay any rent from April 2020 onwards. The Landlord stated that the Tenants moved out in late August 2020/early September, and owe rent for this whole period, 5 months.

2. \$372.75 – Duct Cleaning

The Landlord stated that the Tenants left a large mess in the house, and the furnace ducts were full of garbage and debris, such as piles of cigarette butts, bullets, drug paraphernalia, and other garbage. The Landlord provided photos and receipts for this item to cover the expenses they incurred to clear out the furnace ducts.

3. \$72.45 – Truck Rental

The Landlord withdrew this item at the hearing.

4. \$1,875.00 – Interior Repaint – Labour costs

The Landlord stated that the interior walls were repainted the month before the Tenants moved in, and when they left, there was food caked on the walls, large holes, scratches, and marks throughout the whole house. The Landlord provided photos and a condition inspection report to show the dirt and damage, as well as the painting invoice from the company they hired to repaint the unit. The Landlord also explained that the unit needed repainting because of all the cigarette smoke, despite the fact it was a non-smoking unit.

5. \$70.58 – Paint supplies

The Landlord stated that she bought these supplies so that the hired painter could do the above noted work. This item is for material cost only. A receipt was provided.

6. \$288.77 – HVAC repairs

The Landlord explained that the Tenants put cigarette butts inside the ducting and the furnace, and also removed a cover plate in the garage, which caused the heating distribution system to malfunction, and freeze up. The Landlord hired a professional HVAC company to come and repair and refurbish the system. A receipt and photos were provided.

7. \$189.00 – Cleaning services

8. \$78.75 – Cleaning services

The Landlord stated that they had to hire a cleaning company to come and clean/remove garbage that was left behind by the Tenants. The Landlord stated that this amount is comprised of 8.5 hours spanning 3 different days. Receipts were provided, as were photos of the dirty rental unit.

9. \$1,850.00 – September rent

10. \$1,850.00 – October rent

The Landlord stated that they are seeking these two months worth of rent because the Tenants failed to give adequate Notice that they were going to vacate and because the Tenants were under a fixed term tenancy agreement until January 31, 2021. The Landlord stated that they tried to mitigate their losses and restore the rental unit to a reasonably clean state in a timely manner. However, the Tenants were misleading in that they said they would come back for some of their items but never did. Further, the Landlord stated that it took most of September to clean and repair the damage and debris. The Landlord stated they did not re-rent the unit until November 1, 2020, because it could not be re-listed for rent until late September, after the repairs were done.

11. \$399.00 – Fraser Valley Girls Painting

The Landlord withdrew this item.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenants caused damage to the rental unit in several ways, as itemized above. I also find the evidence before me sufficiently demonstrates that the Tenants left the rental unit in significant disrepair, left behind lots of garbage and left a significant mess, some of which required significant time and effort to remedy.

I find the Landlord's expenses to remedy the rental unit are reasonable considering the multitude of issues left behind. I award the Landlord the full amount of her claim for the furnace repair and duct cleaning (items 2 and 6). I also award the costs, in full, for interior repainting (items 4 and 5), as the unit was very recently repainted, prior to the start of the tenancy, and the unit was left with significant wall damage, which goes beyond reasonable wear and tear. I also award the cleaning costs in full (items 7 and 8) as I find there is sufficient evidence to show the rental unit was left dirty and in disrepair.

With respect to rent owed, I award the full amount of rent sought. I find the Tenants failed to pay any rent for April, May, June, July, August. Then, when they signalled to the Landlord they would be leaving abruptly at the end of August, they were unclear about when they would return and pick up the rest of their furniture. I accept that the Landlord tried to mitigate the lost rent, and repair the rental unit in a timely manner. It appears they started cleaning and painting in September 2020, despite the fact that not all furniture had been picked up by the Tenants. I also accept that the Tenants' delayed moved out impacted the Landlord's ability to clean and restore the rental unit, and re-list the unit for rent. I find the delay in re-renting the unit was largely caused by the significant number of issues left behind, and the unclear communication from the Tenants about collecting the remainder of their furniture (which they never came to get). I accept that this cost the Landlord rental income for September and October, and that the unit was not re-rented until November. Further, the Tenants were under a fixed term tenancy agreement until January 2021.

I find the Tenants are liable for rent for April – October (7 months x \$1,850.00). I award these items in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her

application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items listed above	\$15,824.85
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$925.00)
TOTAL:	\$14,999.85

Conclusion

The Landlord is granted a monetary order in the amount of **\$14,999.85**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 13, 2022

Residential Tenancy Branch