



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S, MNDL-S, MNDCL-S**

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord and her daughter, S.B. attended the hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony and to make submissions. The landlord affirmed she was not recording the proceedings as directed by Rule of Procedure 6.11.

The landlord explained the application for dispute resolution and evidentiary package were sent to the tenant by way of email on July 30, 2021. This was done following the approval of her substituted service application by an adjudicator with the Residential Tenancy Branch. This application was approved on July 14, 2021 and allowed for service of the notice of dispute and evidence via email. Pursuant to section 71(2)(b) of the *Act*, I find the tenant was duly served with all documents related to the dispute.

Amendment

Following opening remarks, the landlord sought to amend her application from \$12,475.00 to \$4,268.00. As the tenant would not be prejudiced by this new, lower amount, I amend the landlord's application pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?
Can the landlord retain the tenant's security deposit?

Background and Evidence

Undisputed testimony provided by the landlord and her daughter explained this tenancy began on November 28, 2020 and was a fixed term tenancy set to expire on November 30, 2021. Rent was \$1,450.00 per month and a security deposit of \$750.00 was collected at the outset of the tenancy and continues to be held in trust by the landlord.

The landlord is seeking a monetary award of \$4,268.00 for loss associated with this tenancy. The landlord said the tenant vacated the property at an unknown date in the last week of June 2021. The landlord testified that on June 14, 2021 the tenant posted a note to the landlord's door explaining he would be vacating the property "within 30 days." Following this, the landlord said the tenant ceased communication with her. The landlord is seeking a return of rent for July and August 2021. In addition, the landlord said the tenant left the unit very dirty and that it required a significant amount of cleaning following the tenant's move out. The landlord has applied for costs associated with junk removal, painting and cleaning of the unit.

| Item | Amount |
|-----------------------------------|-------------------|
| Unpaid rent for July 2021 | 1,450.00 |
| Unpaid rent for August 2021 | 1,450.00 |
| Painting | 1,008.00 |
| Cleaning | 200.00 |
| Junk Removal | 100.00 |
| Replacement of locks | 60.00 |
| Total + \$100 filing fee = | \$4,368.00 |

The landlord said she received no forwarding address and did not have the keys returned at move-out. As part of her evidentiary package, the landlord supplied several photos purporting to show damage to the rental unit caused by the former tenant. As noted above, the landlord has applied for compensation related to re-painting the unit and for junk removal. The landlord described the unit as "brand new" prior to the tenant's occupation, saying the unit was painted "right before move-in."

The landlord described the attempts made to re-rent the suite following the tenant's departure. The landlord said the unit was posted on Facebook and Telegram for \$1,800.00. The unit was re-rented for September 1, 2021 following approximately 7 to 8 showings.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other’s non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord’s undisputed testimony that *reasonable* efforts were to re-rent the unit as quickly as possible by posting it on Facebook and Telegram following the tenant’s departing and by providing 7-8 showings of the unit. No evidence was presented at the hearing or submitted by the tenant to rebut the landlord’s testimony and evidence. I will therefore award the landlord a monetary award of \$2,900.00 for the unpaid rent of July and August 2021.

The final portion of the landlord’s application concerns an application for a monetary award.

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. As noted in *Policy Guideline #16* notes that 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. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

Following a review of the photos submitted in evidence and after having considered the landlord’s undisputed testimony I accept that the landlord suffered a loss as a result of the tenant’s actions. I find the landlord’s testimony to be credible and accept her

description of the items left in the unit for disposal, along with the necessity to thoroughly clean the unit after the tenant abandoned the unit.

I decline to award the landlord the amount sought for re-painting the unit and will award \$252.00 to reflect the cost associated with touch ups following the tenant's departure. I find this cost considers the useful life of paint as described by *Policy Guideline #40* which places the useful life as 4 years and requires a landlord to re-paint a unit following this time. Further, *Policy Guideline #1* states, "The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible." I find the photos submitted in evidence do not support a large amount of painting, further, I note no receipts were provided in evidence to support the costs associated with painting.

As the landlord was successful in her application, she may recover the filing fee pursuant to section 72 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in its entirety in partial satisfaction for a return of the monetary award.

Conclusion

I issue a Monetary Order of \$2,802.00 in favour of the landlord as follows:

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid Rent for July 2021 | 1,450.00 |
| Unpaid Rent for August 2021 | 1,450.00 |
| Junk Removal | 100.00 |
| Cleaning | 200.00 |
| Painting | 252.00 |
| Less Security Deposit | (-750.00) |
| Return of Filing Fe | 100.00 |
| Total = | \$2,802.00 |

The landlord is provided with a Monetary Order in the above terms and 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 21, 2022

Residential Tenancy Branch