



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aquaterra Management Ltd dvba Columbia Place Apt
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened in response to an application by the corporate landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- to withhold the tenants’ 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 attended the hearing. The landlord was represented by C.F., E.D.S. and E.L. Those present were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord explained they sent a copy of the application for dispute and evidentiary package by way of Canada Post Registered Mail on July 30, 2021. A copy of the receipt and tracking number were provided to the hearing and as part of the landlord’s evidentiary package.

Pursuant to sections 88, 89 & 90 of the *Act*, I deem the tenant served with the application for dispute and the evidentiary package on August 4, 2021, five days after its posting.

The landlord’s representatives affirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

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?

Preliminary Issue - Amendment of Monetary Application

The landlord has applied for a monetary award of \$2,891.00. I note the landlord has submitted a monetary application as follows:

- Unpaid rent July 2021 - \$1,560.00 + \$25.00 (late fee) + \$25.00 (NSF) = \$1,610.00
- Compensation for cleaning, repainting and garbage removal - \$1,081.00
- Return of filing fee - \$100.00

These figure total \$2,791.00, therefore I will base my analysis of the application for a monetary award on the figures cited above as detailed by the amounts submitted, rather than the \$2,891.00 indicated in their application. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reflect this new figure.

Background and Evidence

The landlord explained this tenancy began on March 1, 2019 and ended on July 30, 2021. Rent was \$1,480.00 per month and rose to \$1,560.00 over the course of the tenancy. A security deposit of \$740.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord application of \$2,791.00 represents unpaid rent for July, costs associated with remediating the unit following the tenant's departure from the rental and a return of the filing fee.

The landlord explained the tenant provided written notice to vacate the unit on June 25, 2021 and moved-out of the unit at the end of July 2021 in accordance with this notice. Following the issuance of notice to the landlord, the tenant closed his bank account, preventing the auto-withdrawal of rent for July 2021. Rent of \$1,560.00 was therefore unpaid. The landlord has also applied to recover a late fee of \$25.00 and a non-sufficient funds fee (N.S.F.) of \$25.00.

The landlord has also applied to recover the costs associated with repainting the suite, removing garbage left in the unit, rekeying and fob replacement, carpet and drape cleaning and general cleaning. The landlord said the tenant had painted the unit different colours requiring the apartment to be fully repainted so that it could be returned to its original colour. Further, the landlord explained the tenant failed to attend the

move-out inspection, did not return the keys or the fobs and left a significant amount of debris in the unit at move-out. As part of the landlord's evidentiary package, the landlord included numerous photos depicting the state of the unit at move-out and a copy of the move-out inspection report.

The landlord stated the carpets and drapes were professionally cleaned at the outset of the tenancy and that the tenant was expected to return them in a similar state at the conclusion of the tenancy.

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. As noted in Policy Guideline #16, 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 their entitlement to a claim for a monetary award.

The landlord has applied for a monetary award of \$2,791.00 as detailed above.

After having considered the oral testimony of the landlord and following a review of the evidence, I am satisfied on a balance of probabilities that the landlord has demonstrated their entitlement to the entirety of their application for a monetary award. I found the landlord to provide credible, consistent evidence that was supported both by photographic and documentary evidence. I accept the landlord's undisputed testimony that the property was left in a poor state following the conclusion of the tenancy and I accept that the tenant failed to clean the unit at move out. Further, I find that the tenant failed to pay rent for July 2021 and therefore owes the rent for the entirety of July 2021 along with associated late and NSF fees.

As the landlord was successful in their application, they may recover the filing fee. Using the offsetting provisions contained in section 72 of the *Act* I allow the landlord to retain the tenant's security deposit in partial satisfaction for the monetary award granted.

Conclusion

I order the tenant to surrender the security deposit to the landlord.

Pursuant to sections 67 & 72 of the *Act*, I grant the landlord a Monetary Order of \$2,051.00 as follows:

ITEM	AMOUNT
Unpaid rent for July + NSF (25.00) + late fees (25.00)	1,610.00
Repainting, garbage removal, cleaning	1,081.00
Return of filing fee	100.00
Less Security deposit	(-740.00)
TOTAL =	\$2,051.00

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: February 4, 2022

Residential Tenancy Branch