



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL-S, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on July 21, 2021 seeking an order to recover the money for unpaid rent, compensation for damage, and for other money owed. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 7, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference all hearing; the Tenant did not attend.

Preliminary Matter – service to the tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document they served it at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the Landlord described how they obtained an order for substituted service from this office, on August 26, 2021. This authorized the Landlord to use the Tenant’s email as a verified method of service. The Landlord served the Notice of this hearing, as well as their prepared evidence, on August 1, 2021. The Landlord made an amendment to their Application and served it in the same manner. In effect, they served their prepared evidence twice to the Tenant.

I accept the Landlord's testimony that they sent the hearing material via email. Based on the submissions of the Landlord, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(f) of the *Act*, and thus s. 43(2) of the *Residential Tenancy Regulation*. After reviewing this with the Landlord, I am satisfied the Landlord advised the Tenant of this hearing in due course. The hearing proceeded in the Tenant's absence.

Issues to be Decided

- Is the Landlord entitled to compensation for recovery of rent, and/or damage, and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The Tenant signed the agreement in May 2017, and the Landlord signed on May 18. This was for the tenancy that started on June 1, 2017. The monthly rent amount was \$2,400, payable on the 1st of each month. The Tenant paid an initial security deposit of \$1,200 and a pet damage deposit of \$500. The Landlord testified that the rent amount never increased, and that they reduced it by \$100 to help the Tenant.

The agreement specifies that no utilities are included in the rent amount. This was water, sewer, garbage, electricity, and gas. An addendum to the agreement sets out that a walk-through inspection meeting was to be completed prior to the move-in date and "a set of photos taken during the walkthrough will be attached and form a part of this agreement." The same addendum also sets out that "Tenants are responsible for the utility bills (water, sewer, garbage, gas and electricity)."

The Landlord completed this walk-through with the Tenant on May 22, 2017. A complete document of this meeting is in the Landlord's evidence. The Tenant signed to indicate their agreement that the report fairly represents the condition of the rental unit.

The catalyst for the end of this tenancy was the Tenant sending an email to notify the Landlord on June 22, 2021. The set move-out date was July 31, 2021. The Tenant stated they were not going to pay the July rent in full and stated the Landlord could use the deposit money toward that rent amount. The Tenant advised they would also send an additional \$500 for the next month. They stated: “realistically I will very likely be out by the 20th of next month [i.e., July].”

The Landlord provided a copy of the Condition Inspection Report for the meeting that was set for July 16, 2021. In the hearing, the Landlord stated that the Tenant did not attend for the full meeting and left: “they refused to stay to do the house inspection.” The Tenant stated that all of the trash the Landlord identified was there before. The Landlord completed the report individually. The Landlord listed a number of items they counted as damage to the rental unit.

The Landlord found a new tenant who was able to move in ten days prior to the August start of the tenancy. This early entry for the new tenants was rent-free, so they could complete cleaning, fix holes in the walls and paint. There would be a corresponding rent reduction for the following month for work completed. The new tenants discovered the stove does not work. The Landlord also had to remove the Tenant’s non-functioning dishwasher and that caused a water leak under the sink, and a plumber had to visit for this reason. Previously, the Tenant had insisted to the Landlord that this was their own dishwasher they had installed.

After their initial claim filed with their Application, the Landlord amended their claim on December 12, 2021. This finalized the claimed amounts as follows:

Item(s)	Amount Claimed	\$
1	rent for July 2021	2,400.00
2	utilities for February, March, April 2021	305.34
3	utilities for May, June, July 2021	296.13
Subtotal		3,001.47
4	trash removal	2,700.00
5	damaged stove replacement	1,000.00
6	wall holes/painting by new tenants	1,030.00
7	disposal of Tenant’s broken dishwasher	250.00
8	plumbing charges because of broken dishwasher	289.80
9	repair broken fence, broken drainpipes, remove weeds in yard, broken railing in balcony	1,000.00
10	missing towel racks, closet rod, closet handles	166.68

Subtotal	6,436.48
Total	\$9,437.95

- 1 The Landlord claims inadequate rent payment for the month of July; therefore, they claim the full amount of July rent.
- 2 The Landlord provided the utility statement from the city, dated May 6, 2021. This shows the amount of \$305.34 for the residential property.
- 3 The Landlord provided the utility statement from the city, dated November 19, 2021 for the billing period July to September, 2021. This shows the amount \$296.13 as claimed. In an initial list, the Landlord gave the amount of \$202; when they received the invoice, they amended this claimed amount as that shown on the invoice.
- 4 The Landlord provided a hand-written receipt from a "small haul" company. This set out 15 hours of work for 2 people. This totals \$2,500 and a dump fee cost \$200 for the total claimed of \$2,700.
- 5 In their written statement the Landlord claims the stove cost \$800 plus tax. The new tenants discovered the stove did not work. They notified the Landlord of this on July 24 via message that the Landlord included in their evidence. The new Tenants proposed this cost to the Landlord as from Home Depot.
- 6 The new tenants moved in 10 days prior to August. They undertook cleaning, repairing holes and painting. This is the cost of foregone rent which was the arrangement the Landlord made with the new tenants.
- 7 This amount for the dishwasher removal is shown as a written cheque for July 26, 2021. The Landlord sent a list of transactions to show this was paid from their bank account on that date. In an email on June 27, the Tenant informed the Landlord: "I had to . . . put in a dishwasher. This [was] time and money that comes out of my own pocket."
- 8 The Landlord submitted a copy of the invoice they paid for the plumber on July 21, 2021.
- 9 The Landlord provided photos that show a fence needing repair in the backyard, dead grass and weeds, and a broken exterior drainpipe.
- 10 The Landlord provided Home Depot receipts that show this amount paid on July 19 and July 21. There is one picture of a closet door with a missing handle.

In the hearing, the Landlord explained that they enlisted the new tenants for their assistance on work and repairs. This was the only help they could secure because they live in a different area outside Canada.

Adding a \$100 Application filing fee for this hearing, the total amount of the Landlord's claim is \$9,537.95.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish **all** of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To determine the Landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

The *Act* s. 45(1) provides that a tenant may end a periodic tenancy by giving the landlord a notice effective on a date that is not earlier than one month after the landlord receives the notice and is the day prior to the day in the month that rent is payable in the agreement.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

For each of the items listed, I find as follows:

- 1 The Tenant provided correct notice for the end-of-July move-out date in terms of its timing. I find as fact the Tenant refused to pay rent for that final month. Evidence for this is the Landlord serving a notice to end the tenancy based on that month's unpaid rent, and the Tenant's direct email statement. This was not resolved. I find the premise for the Tenant blankly stating to the Landlord that they keep the deposits for the rent equivalent was their statement they would in reality be out from the unit for July 20th. This does not alleviate the Tenant's obligation to pay the full month of rent. There was no evidence from the Landlord that the Tenant made good on their proposal to send another \$500 toward July rent which would still be short for the correct rent amount. I grant the full amount of July rent at \$2,400 to the Landlord.

- 2 I find the Landlord established the loss to them, and they have established the value. I so award the amount for February-to-April utilities for \$305.34.
- 3 The Landlord provided the utilities invoice for July – September 2021. Only one of these months is payable by the Tenant here; I divide the total amount by three for the total amount of \$98.71, granted to the Landlord here.
- 4 I am satisfied of the need for extensive trash removal. This is plainly evident in the Landlord's photos for both inside and outside the rental unit. I grant this full amount of \$2,700 to the Landlord, based on the evidence they provided. This is a breach by the Tenant of s. 37(2).
- 5 The Landlord presented alternate amounts for a stove replacement. The new tenants advised they could replace it at the cost of \$800 on August 2. The Landlord did not provide a receipt or other information to show they paid \$1,000 for that new stove. Without proof of the expense to them, I dismiss this piece of the Landlord's claim. The Landlord provided ample proof of the need for its replacement; however, there is no proof of the value of the loss to them.
- 6 I accept the Landlord's testimony that they had no other option than to enlist the help of the new tenants in repairing certain pieces within the rental unit. This is painting and wall repair. These tenants visited for some time prior to the start of their tenancy; their rent correspondingly was reduced for the work they completed. I find the Landlord showed this work was necessitated by the Tenant leaving the rental unit in a state that was beyond reasonable wear and tear. I accept the Landlord's evidence that the state of the rental unit led to the Landlord's loss of rent income for the following month. This is an unreasonable cost for the Landlord to bear and stems from the Tenant's breach of s. 37(2). I grant this portion of the Landlord's claim to them, for \$1,030.
- 7 I am satisfied the dishwasher needed removal. I grant this cost of \$250 to the Landlord.
- 8 I am not satisfied the dishwasher removal caused a problem that required plumbing. The invoice provided is fulsome in its detail to show what was required. I am not satisfied it is damage stemming from the Tenant here. I dismiss this portion of the Landlord's claim.
- 9 I am not satisfied of the level of work needed for yard clean up, fence repair, or the broken drainpipe. There are merely photos and no other details. It is not known how the Landlord undertook to complete this work, or the labour involved. I dismiss this piece of the Landlord's claim based on the lack of evidence.
- 10 I am not satisfied of the damage for this piece. The Landlord provided one image of a closet door missing a handle; there is no proof of other missing or broken items. I dismiss this piece of the Landlord's claim.

The Landlord properly made a claim against the security and pet damage deposits and has the right to do so. I find the amount of the deposits, as authorized by the *Act*, is \$1,700. The Landlord is holding this amount. I order this amount deducted from the total of the rent and utilities and damages. Reducing the total of \$6,784.05 by \$1,700 brings the total monetary order to \$5,084.05. Applying the security deposit to an amount owing is permissible by s. 72(2)(b) of the *Act*.

Because the landlord was successful in their Application, I grant the reimbursement of the \$100 Application filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,184.05 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order to the Landlord in the above terms, and they must serve this to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial Court where it will 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 s. 9.1(1) of the *Act*.

Dated: February 9, 2022

Residential Tenancy Branch