



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

On March 4, 2021, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for July 22, 2021. This final, reconvened hearing was set down for January 25, 2022 at 1:30 PM.

A.L., D.S., and B.B. attended the reconvened hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 32-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

As per the Interim Decision dated July 23, 2021, service of documents was confirmed and all evidence from both parties was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020. The tenancy ended on September 1, 2021 when the Tenant was forced to give up vacant possession of the rental unit due to an Order of Possession based on unpaid rent (the relevant file numbers are noted on the first page of this Decision). Rent was established at \$5,950.00 per month and was due on the first day of each month. A security deposit of \$2,975.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

At the original hearing, T.M. advised that the Tenant left the hatch in the rental unit, that accesses the rooftop, open overnight and this caused water to leak into the rental unit on November 12, 2020. This resultant water leak caused damage to the drywall, baseboard, and laminate flooring. She testified that the Landlord is seeking compensation in the amounts of **\$3,922.67**, **\$6,964.87**, **\$536.55**, and **\$1,158.10** for the cost of restoration services and the repair of the rental unit. She stated that the repairs were delayed as the Tenant would not be available to allow access to the rental unit. In addition, she submitted that the Tenant left this hatch open again in April 2021, causing another, smaller leak. She referenced the invoices submitted to corroborate the cost of the repairs.

The Tenant advised that he opened the hatch on the evening of November 12, 2020, using the fob. There was a windstorm that evening, so he went to retrieve his cushions from the rooftop, but the hatch would not close. He suspected that this was maybe due to an electrical malfunction with the hatch, a defective remote, or a bad battery. As a result, rainwater was leaking into the rental unit. He stated that he was not provided with instructions or a manual for the use of this hatch, and that there were no instructions for

it on the panel on the wall. He initially stated that “nothing could be done to stop the water” from entering the rental unit; however, he later changed his submissions and stated that he placed towels down on the floor.

He stated that he emailed D.S. and the concierge on November 12, 2020 about this issue, but D.S. did not respond or attend the rental unit until the next day. D.S. told the Tenant to replace the battery; however, when he took it to a local store, he was informed that it could not be replaced as the battery was soldered. He testified that D.S. then took the fob on November 13, 2020, and fixed it. He stated that it was his understanding that the battery in the remote had died.

He then provided contradictory testimony about possibly also calling an agent of the Landlord about the leak, but he could not “recall what happened” or if anyone answered. He later advised that he did not make any calls to report this emergency.

He submitted that he had a second fob for the hatch, but this was given to his cleaner. He stated that he attempted to contact his cleaner in an effort to get the hatch closed; however, this person did not answer his call.

Regarding access to the rental unit, he stated that he only restricted access if D.S. did not give him sufficient notice to enter the rental unit. With respect to the hatch being left open again in April 2021, he stated that the tradespeople that were working on the repairs had left it open.

T.M. advised that D.S. responded to the Tenant’s email at 7:49 AM on November 13, 2020, and then attended the rental unit at 8:20 AM, which is corroborated in the Tenant’s own evidence. However, the Tenant asked him to come back later. She stated that D.S. took the fob and had the battery changed, which was a simple fix. As well, she noted that all residents receive a courtesy email prior to moving in which lists an emergency contact number, and that no such call was received from the Tenant. In addition, she stated that the concierge would be required to write a report about such severe water ingress, and no such report was ever written.

D.S. confirmed that the fob was open before he arrived, and that the battery simply needed to be replaced.

As was consistent with his testimony, the Tenant contradicted himself again and claimed that he called the emergency number, that was provided by the concierge, and left a voicemail.

At the reconvened hearing, A.L. advised that the Landlord is seeking compensation for two strata fines, in the amount of **\$200.00** for an unauthorized move and **\$200.00** due to a noise violation. She also advised that the Landlord is seeking compensation in the amount of **\$1,000.00** for other noise bylaw fines, and she referenced the documentary evidence submitted to support this position.

B.B. advised that the Landlord is seeking compensation in the amount of **\$221.03** because the Tenant complained of a buzzing noise in the rental unit. The Landlord sent in a technician to investigate, and no noise was discovered. She cited the invoice submitted as documentary evidence to support the cost of this unnecessary request.

She also advised that the Landlord is seeking compensation in the amount of **\$105.00** because the Tenant had dumped refuse in the fire stairwell next to the rental unit. A wagon that was seen containing garbage in the stairwell was also observed in the rental unit. As well, no other residents of the building lived on that side, so it would be unlikely that they would have been responsible for this garbage. In addition, she stated that there were 16 previous infractions against the Tenant for improper garbage disposal. She referenced the invoice submitted to support the cost of the garbage removal. A.L. noted that the Landlord is also seeking compensation in the amount of **\$200.00** for the cost of a strata fine for the improper disposal of refuse.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming

compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's request for compensation in the amounts of \$3,922.67, \$6,964.87, \$536.55, and \$1,158.10 for the cost of restoration services and the repair of the rental unit, I have before me solemnly affirmed testimony from agents of the Landlord and documentary evidence to support the cost of the repairs. On the other hand, I have primarily the Tenant's solemnly affirmed testimony that the water leak was due to an issue with the rooftop hatch. However, I note that throughout the original hearing, the Tenant provided contradictory and inconsistent testimony that appeared to adapt as more submissions were divulged or revealed by agents of the Landlord. I found much of what the Tenant testified to was conflicting, unreliable, and dubious. This was especially evident when the Tenant stated that he took no action to mitigate the substantial amount of water coming into the rental unit. When it was brought to his attention that this seemed to defy common sense and ordinary human experience, he then changed his testimony to state that he put towels down.

When the documentary evidence and testimony is weighed on a balance of probabilities, I am doubtful of the credibility and reliability of the Tenant's submissions on the whole. I find it more likely than not that the Tenant was negligent for leaving the hatch open, causing the ingress of water into the rental unit. I find the agents of the Landlord to be more credible witnesses than the Tenant. The agents for the Landlord provided consistent, logical testimony which was supported with documentary evidence where available.

Given that it appears as if the battery to the fob was the issue, and that this was easily replaced by D.S. the next day, this would fall under the obligation of the Tenant to replace. As such, I am satisfied that the Tenant was negligent for this damage, and I grant the Landlord a monetary award in the amount of **\$12,582.19** to satisfy these claims.

With respect to the remainder of the claims brought forth by the Landlord at the reconvened hearing, given that these were undisputed and supported by documentary evidence, I am satisfied that the Landlord has sufficiently corroborated these losses as well. As such, I grant a monetary award accordingly.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the remaining amount of the security deposit (as noted in the relevant previous Decision) in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Cost of restoration and repair of the rental unit	\$12,582.19
Unauthorized move strata fine	\$200.00
Noise violation strata fine	\$200.00
Additional noise violation strata fine	\$1,000.00
Refuse disposal strata fine	\$200.00
Cost to dispose of refuse	\$105.00
Noise repair investigation	\$221.03

Security deposit	-\$2,875.00
Filing fee	\$100.00
Total Monetary Award	\$11,733.22

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$11,733.22** 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 23, 2022

Residential Tenancy Branch