



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 27, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To recover unpaid rent
- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security deposit
- For reimbursement for the filing fee

S.S. and N.E. (the “Agents”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agents testified that the hearing package and Landlord’s evidence were sent to the Tenant at their residence by registered mail on September 14, 2021. The Agents testified that the package was also posted to the Tenant’s door. The Agents testified that they obtained the Tenant’s address through a credit check for the Tenant and observed the Tenant enter and leave the address. The Agents provided Tracking

Number 944 which I looked up on the Canada Post website which shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Agents and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail and is deemed pursuant to section 90(a) of the *Act* to have received the package September 19, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to compensation for damage caused by the tenant, their pets or guests to the unit or property?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Rent arrears	\$9,292.41
2	Repair charges	\$546.13
3	Cleaning charges	\$630.00
4	Outstanding water bill	\$265.49

5	Filing fee	\$100.00
	TOTAL	\$10,834.03

A written tenancy agreement was submitted. The tenancy started June 01, 2016, and was for a fixed term ending May 31, 2017. The tenancy then became a month-to-month tenancy. The Agents testified that rent at the end of the tenancy was \$1,678.00. Rent was due on or before the first day of each month. The Tenant paid a \$787.50 security deposit.

The Agents testified as follows.

The tenancy ended September 29, 2020.

The Tenant did not provide a forwarding address to the Landlord.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree to the Landlord keeping the security deposit.

The parties did a move-in inspection June 01, 2016.

An agent for the Landlord did a move-out inspection without the Tenant. The agent for the Landlord made three attempts to meet with the Tenant; however, the Tenant just left the rental unit. The Landlord did not provide the Tenant with a final opportunity to do a move-out inspection on the RTB form. The agent for the Landlord completed the Condition Inspection Report (the "CIR").

#1 Rent arrears

The Agents testified that the Tenant owes the Landlord \$9,292.41 for rent arrears. The Agents confirmed the Tenant did not have authority under the *Act* to withhold rent at any point.

#2 Repair charges

The Agents testified that the Tenant caused damage in the rental unit all of which was beyond reasonable wear and tear. The Agents confirmed the information shown in the

invoice submitted about a contracting company attending and doing wall repairs, painting, replacing burnt out light bulbs and replacing the toilet.

#3 Cleaning charges

The Agents testified that the Tenant had not done any cleaning at the end of the tenancy and the Landlord had to hire cleaners to do a move-out clean as shown in the invoice submitted.

#4 Outstanding water bill

The Agents testified that the Tenant was responsible for paying for water during the tenancy. The Agents pointed to the water bill in evidence relating to the rental unit and testified that the Tenant did not pay this water bill as required.

Documentary evidence

The Landlord submitted the following documentary evidence:

- Repayment plan
- Rent ledger
- Water bill
- Photos of the rental unit
- CIR
- Invoices
- Tenancy agreement

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Agents about the move-in and move-out inspections, I find the Tenant did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord is claiming for rent arrears, cleaning and an outstanding water bill, none of which is damage to the rental unit.

I accept the undisputed testimony of the Agents that the tenancy ended September 29, 2020.

I accept the undisputed testimony of the Agents that the Tenant did not provide a forwarding address to the Landlord.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim with the RTB against it. Given the Tenant has not provided the Landlord with a forwarding address, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Rent arrears

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the undisputed testimony of the Agents and documentary evidence, I accept that the Tenant failed to pay \$9,292.41 in rent and did not have authority under the *Act* to withhold this. I find the Landlord is entitled to the amount sought.

#2 Repair charges

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Based on the undisputed testimony of the Agents and documentary evidence, I accept that the Tenant caused damage in the rental unit beyond reasonable wear and tear in breach of section 37 of the *Act*. I also accept that the Landlord had to have walls repaired, painting done, light bulbs replaced and the toilet replaced. I also accept that this work cost the Landlord \$546.13 and I find this amount reasonable given it includes wall repairs and painting. The Landlord is entitled to the amount sought.

#3 Cleaning charges

Based on the undisputed testimony of the Agents and documentary evidence, I accept that the Tenant did not do any cleaning at the end of the tenancy in breach of section 37 of the *Act*. I also accept that the Landlord had to hire cleaners to clean the rental unit. I also accept that hiring cleaners cost the Landlord \$630.00. I find the amount sought high; however, the Tenant did not appear at the hearing to dispute the amount and therefore I award the Landlord the amount sought.

#4 Outstanding water bill

Based on the undisputed testimony of the Agents and documentary evidence, I accept that the Tenant was required to pay for water during the tenancy. I also accept that the Tenant failed to pay \$265.49 for a water bill during the tenancy and therefore I award the Landlord the amount sought.

#5 Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Rent arrears	\$9,292.41
2	Repair charges	\$546.13

3	Cleaning charges	\$630.00
4	Outstanding water bill	\$265.49
5	Filing fee	\$100.00
	TOTAL	\$10,834.03

The Landlord can keep the \$787.50 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$10,046.53.

Conclusion

The Landlord is entitled to \$10,834.03. The Landlord can keep the \$787.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$10,046.53. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: March 28, 2022

Residential Tenancy Branch