



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on September 18, 2021 seeking an order for compensation for damage to the rental unit, recovery of rent, and 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 May 27, 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 call hearing; the Tenants (hereinafter, the “Tenant”) did not attend.

Preliminary Matter

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 they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord provided a copy of their separate emails to each Tenant, dated October 17, 2021, showing delivery of the Notice of Dispute Resolution Proceeding and their evidence. This followed from a Residential Tenancy Branch decision of an Arbitrator who authorized that method of service.

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), with the *Residential Tenancy Regulation* referring to an email address as an address for service by the person.

In line with the Adjudicator's October 14, 2021 decision, I find the Notice and evidence was deemed served to the Tenant on October 20, 2021.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for compensation for damage, unpaid rent, or other money owing, 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. Both parties signed the tenancy agreement on December 12, 2020 for the tenancy starting on January 1, 2021. The monthly rent amount was \$2,000, payable on the 1st of each month. The tenant paid a security deposit of \$1,000 and a pet damage deposit of \$700.

In the hearing and on their Application, the Landlord set out that the Tenant notified them via phone call on August 23, 2021 that they had left one week prior. The Landlord retrieved one set of rental unit keys from one of the Tenants on August 25, and then received the other key in the mail around two months later. As per building strata guidelines, the Landlord had to change the rental unit lock, and reprogram a building fob, costing \$100 in total. A replacement for a missing parking pass/decal cost \$50.

The building strata also fined the Landlord for the Tenant's disposal of a microwave oven in the building garage/recycling area. Because this violated strata rules, they imposed a \$200 penalty to the Landlord for this.

The Landlord claims one month of full rent amount, for \$2,000, because the Tenant did not provide adequate notice of their move-out. They were unable to rent the unit for the

following month and, and within no replacement tenants in place this represents a true loss to them.

The Landlord attempted to schedule a move-out inspection with the Tenant; however, this did not occur. After receiving the one set of keys on August 25, the Landlord scheduled a move-out inspection meeting, set for September 17, 2021. The Tenant did not respond to this notice, and the Landlord inspected the rental unit on their own on September 18, 2021. A completed Condition Inspection Report is in the Landlord's evidence as proof of their visit and observations.

In the evidence, the Landlord provided photos of damage within the rental unit. This shows damage to the walls, and the doorframe of the entrance. There is also dirty carpeting at the main entrance. In the Condition Inspection Report, the Landlord listed "kitchen drawer, carpets are dirty. missing bulb in kitchen. damaged sliding door of entrance closet as well as master bedroom right closet."

The Landlord had to dispose of a mattress within the rental unit on their own, at the cost of \$50 to them. A receipt for this amount is in the Landlord's evidence, showing the date of September 4, 2021 for a disposal company.

To repair the walls, the Landlord purchased materials and completed the work on their own. The cost for materials in total was \$62.65. The Landlord put an estimate for \$1,000 of their own labour, based on a quote for \$2,415 from a repair company who visited the rental unit and advised on their estimate. This painting work, at their own "low hourly rate" so as to not impose high costs on the Tenant, was for approximately 4 days of work within the rental unit. The Landlord completed this work at the end of September.

The Landlord paid for replacement materials for the sliding doors, at a cost of \$152.37. All items claimed by the Landlord for repairs within the rental unit are verified by receipts in their evidence.

The Landlord also paid for a cleaning service to come into the rental unit. A receipt in the evidence shows a paid amount of \$367.50 on August 25, 2021.

In total, the Landlord calculated their total claim at \$3,982.52. They applied to use the withheld full amounts of the security deposit and the pet damage deposit to offset this claim.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish 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.

The tenancy agreement that was in place between the parties shows this was a monthly, non-fixed-term tenancy. By s. 45(1) of the *Act*, a tenant may end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the landlord receives the notice, and is the day prior to the rent payment day.

Here, the Tenant advised the Landlord they had already moved out. This was not within the parameters of the *Act*. The tenancy agreement signed by the Tenant sets out the same in section 14, subsection 1. because of the breach of the *Act* and the tenancy agreement, I find the Tenant must pay the Landlord for the full amount of one month's rent, at \$2,000, for September 2021. This is simply due to insufficient notice from the Tenant.

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

For the Landlord's claim for repairs and cleaning, I make the following findings based on the submitted evidence:

- I find the Landlord repaired damage to the walls by painting on their own, and this represents a reasonable effort at minimizing the costs involved. I so award the amount of \$1,062.65 as compensation for their painting.

- The Landlord did not provide sufficient evidence to show the need for a cleaning service. Further, the detail on the cleaning service is lacking on the specifics of that clean-up job. There are no images in the Landlord's evidence to show the need for extra cleaning with hiring a service, and the Condition Inspection Report does not provide the level of detail needed to show anything beyond reasonable wear and tear was present in the unit thus requiring extra cleaning. I dismiss this piece of the Landlord's claim for this reason.
- The Landlord noted the damage to sliding doors; however, there was no proof of this damage in the form of photos. I dismiss this piece of the Landlord's claim for this reason.
- I find the receipt from the local junk removal company is sufficient evidence to show that service was required to remove a mattress from the rental unit. This is something the Tenant should have properly dealt with, and it would be unfair for the Landlord to pay that cost on their own. I grant the Landlord \$50 for this piece of their claim.

I find the Landlord incurred extra costs from the strata for matters that the Tenant should have responsibly tended to on their own. The Tenant's improperly disposed of a microwave and did not afford the Landlord the courtesy of a prompt key, fob, and parking decal return. I so grant the Landlord \$350 for these costs.

In total, I find the Landlord is eligible for \$3,462.65.

The Landlord has properly made a claim against the security deposit and the pet damage deposit and has the right to do so. The Landlord is holding this amount of \$1,700. I order this amount deducted from the total of the rent, painting, junk removal, and strata fine amounts set out by the Landlord. Reducing the total awarded amount by \$1,700 brings the total monetary order to \$1,762.65.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. I am authorizing the landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$1,762.65 as compensation.

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 \$1,862.65 for compensation set out above and the recovery of the filing fee for this hearing application. The Landlord is provided with this 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, the Landlord may file this 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: May 27, 2022

Residential Tenancy Branch