



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 6763332 CDA Inc., HOOPP Realty Inc. and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1:30 p.m. and ended at 1:55 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager, BC. (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was substitutionally served with the Notice of Dispute Resolution Hearing, supporting documents, written evidence and a copy of a substituted service order dated January 21, 2022 via email at the email address noted on the cover page of this decision. The landlord testified the email was sent by her colleague at 4:06 p.m. on January 25, 2022. Pursuant to section 71 of the Act, the tenant is deemed served with the Notice of Dispute Resolution Hearing package on January 28, 2022, three days after it was sent via email.

This hearing proceeded in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for rent and damages?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on December 1, 2020, with rent set at \$1,650.00 per month payable on the first day of each month. A security deposit of \$825.00 was collected from the landlord and a condition inspection report was done with the tenant at the commencement of the tenancy.

The tenancy ended when the landlord was granted an Order of Possession after serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. The landlord also obtained a monetary order for unpaid rent for the month of September 2021. The tenant paid rent for October 2021, but never paid any rent for November 2021.

After serving the tenant with the Order of Possession, the tenant gave up the rental unit and moved out on November 18, 2021. The landlord seeks compensation for the first 18 days in November.

The landlord offered the tenant several opportunities to attend for a condition inspection report at the end of the tenancy. The landlord testified that two final opportunities for final inspection were served upon the tenant, although only one was provided as evidence. The building manager served the first notice of final opportunity to schedule a condition inspection on November 10th at 1:56. This notice was not provided as evidence. The second notice of final opportunity was to attend at 12:00 p.m. on November 18, 2021. The landlord testified that was posted to the tenant's door, however the landlord was unable to testify when it that was done. The tenant never showed up for a condition inspection on either date.

When the tenant left, the carpets were dirty. The landlord provided photos of the carpets at the end of the tenancy and an invoice in the amount of \$175.00 plus GST to have the carpets cleaned. The tenant left behind garbage, such as items in the fridge and other debris in the unit at the end of the tenancy. The landlord hired a contractor to remove the garbage repair damage to the unit and clean the unit for \$380.00. A copy of the contractor's invoice was provided as evidence, as were photos of the unit at the end of the tenancy. The tenant left holes in the walls where he affixed his television to the wall and made scratched and gouges in the walls. The landlord used the same

contractor to make these repairs and paint the unit at a cost of \$650.00. With GST, the contractor charged a total of \$1,081.50.

Lastly, when he left, the tenant didn't return all the keys to the mailbox. The landlord hired a locksmith to change the lock to the mailbox and the landlord provided an invoice for \$157.73 as evidence.

Analysis

- Claim for overholding rent

The landlord was granted an Order of Possession on October 27, 2021. It is unknown when it was served upon the tenant, however it is clear to me that the tenant did not deliver full and peaceable vacant possession and occupation of the rental unit within 2 days after being served with it. The undisputed evidence before me is that the tenant remained occupying the rental unit after the landlord was to have possession of it, making the tenant an overholding tenant.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states at part B:

B. Overholding tenant and compensation

Section 44 of the *RTA* (section 37 of the *MHPTA*) sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the *RTA* (section 50(3) of the *MHPTA*). This includes compensation for the use and occupancy of the unit or site on a *per diem* basis until the landlord recovers possession of the premises.

Pursuant to section 57(3), I find the tenant is liable to pay rent on a per diem basis for the first 18 days in November 2021. [$\$1,650.00/31 \times 18 = \mathbf{\$958.06}$]. The landlord testified that they were already granted a monetary order for September's arrears when they obtained their Order of Possession, and I dismiss their application seeking arrears for September's rent a second time.

- Claim for damages under section 67

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Pursuant to section 37, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the undisputed evidence of the landlord, I find the tenant didn't comply with section 37 and leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find that there was garbage left in the refrigerator, a broken stove drawer, an unclean sink, and dismantled heater panels in the living room and bedroom. For the cleaning and repairs, I find the landlord's invoice of **\$380.00 plus GST** to be reasonable and I grant the landlord compensation in that amount.

Further, I have reviewed the photos of the gouges to the wall and the screw holes left where the tenant installed his television. I find the landlord's invoice, paying **\$650.00** to repair the walls and repaint the unit is reasonable. I award the landlord this expense, together with the **GST** on that amount.

The tenant did not attend this hearing to dispute the landlord's claim that he did not return the mailbox key, causing the landlord to hire a locksmith to replace it. This breaches section 37 of the *Act* and I award the landlord the expense sought of **\$157.73**.

Residential Tenancy Branch Policy Guideline PG-1 states that generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. This tenancy began on December 1st and the tenant vacated the unit on November 18th, almost a full year later. I grant the landlord compensation in the amount of **\$175.00 plus GST** for the carpet cleaning.

The landlord may recover the filing fee of **\$100.00** for this application as the landlord succeeded.

The landlord continues to hold the tenant's security deposit of **\$825.00**. I find that the landlord has not extinguished their right to make an application against the security deposit under sections 24 or 36, and I order that pursuant to section 38, the landlord may retain the tenant's entire \$825.00 security deposit in partial satisfaction of the monetary order.

Item	Amount
Overholding (rent) November 1 to 18, 2021	\$958.06
Cleaning and repairs	\$399.00
Wall repairs and painting	\$682.50
Mailbox key	\$157.73
Carpet cleaning	\$183.75
Filing fee	\$100.00
Less security deposit	(\$825.00)
Total	\$1,654.04

Conclusion

I award the landlord a monetary order in the amount of **\$1,654.04**.

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: August 22, 2022

Residential Tenancy Branch