



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The Landlord via their agent filed an Application for Dispute Resolution (the “Application”) on December 22, 2021 seeking an order to recover the money for unpaid rent, and an order for compensation for damage to the rental unit. 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 August 16, 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 – Landlord’s notification to Tenant of this hearing

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

In the hearing the Landlord presented that they received an order for substituted service from the Residential Tenancy Branch. An adjudicator was satisfied on the Landlord’s Application that email with the Tenant was an established method of communication, and authorized the Landlord to use this as an address for service. After receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on January 17, 2022, the Landlord used that email method to send it to the Tenant on January 19, 2022. They listed the required documents they sent to the Tenant in that mail.

I accept the Landlord's evidence that the package was sent to the Tenant via an authorized email address. 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 the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for recovery of rent, and/or compensation for damage 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 May 8 and May 9, 2020. This was for the tenancy starting on May 15, 2020 and ending on April 30, 2021, reverting to a month-to-month agreement after the initial one-year fixed term. The monthly rent amount was \$1,950, and the Tenant paid an initial security deposit of \$975.

With the tenancy agreement, the Landlord submitted a copy of the Incoming Inspection Report. This shows the state of the rental unit on May 15, 2020, indicated on the document to be the move-in inspection date. The report listed specific items of some damage throughout. The Tenant signed on page 3 to indicate that "this report fairly represents the condition of the rental unit."

In the hearing, the Landlord explained that the Landlord ran a trust account for payment of rent by the Tenant via pre-authorized debit. The Landlord noticed the trust account had suddenly decreased by \$3,900, i.e., the equivalent of two months of rent. The Tenant had completed a form with the banking institution to state that the Landlord should not have collected that rent amount. To the Landlord, this was a retraction of the August and September 2021 rent already paid. The Landlord made this discovery on September 28, 2022. When they queried to the Tenant about this, the Tenant stated they had "banking issues". The Tenant then informed the Landlord they would pay for October 2021 rent separately.

The Landlord issued a 10_Day Notice to End Tenancy for Unpaid Rent to the Tenant on October 2, 2021. They did not hearing anything further from the Tenant regarding payment of October rent that did not occur on October 1 as provided for in the agreement.

On October 29, 2021, the Landlord received the keys for the rental unit in the mail slot at their administrative office. The Landlord concluded that the Tenant abandoned the rental unit, not informing the Landlord of the end of tenancy.

The Tenant had the paid rent returned to them for August and September 2021. This is the total of \$3,900. The Landlord claims this amount, plus the rent amount for October 2021 for a total of \$5,850.

The Landlord entered the rental unit on October 30. They inspected the unit and took pictures of the damage caused by the Tenant. In their evidence the Landlord provided six wide-angle pictures of separate rooms in the rental unit, to show the condition of the rental unit. These show various unclean states with many items left behind.

The Landlord also provided specific photos showing the floor throughout the rental unit. They provided a quotation dated November 20, 2021 from a contractor. For the removal of old flooring, with an installation of matched color floor "on the new laminate floor area", the total including tax is \$3,570. The Landlord in the hearing stated they did not proceed with work, only obtaining the quote. They claim this entire amount from the Tenant for damages to the floors in the rental unit.

The Landlord also included an invoice for cleaning within the rental unit, for \$220.50. The invoice is dated November 11, 2021, for 6 hours of work at \$35 per hour.

The Landlord observed lots of scuffs on the walls in the bedroom and the living room. The Tenant at some point had LED lighting stuck to the walls, and when removed this caused damage to the walls. They hired a painter, and in the invoice dated November 8, 2021 the painter noted removal of panels from the walls and ceiling, patching, painting on walls, the ceiling, and 1 section of the baseboard and 1 windowsill. The invoice amount, as shown on the invoice in the Landlord's evidence, is \$568.05.

The total amount of the Landlord's claim is thus \$10,208.55.

Analysis

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, and give the Landlord all the keys and other means of access that are in the possession or control of the Tenant and that allow access to and within the residential property.

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

As set out above, the Landlord's worksheet identifies four separate amounts: recovery of rent amounts; cleaning costs, damaged floors, and painting. 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.

For the rent amounts owing, I find the Landlord has verified the amount in question and provided proof that the amount owing is in relation to the tenancy. As a result, I find the amount of \$5,850 satisfies the Landlord's claim for rent owing; I so award this amount to the Landlord via monetary order.

I find the Landlord provided ample evidence showing the need for additional cleaning in the rental unit. This amount of \$220.50 is granted, due to my review of the photos they provided in their evidence.

I find damage to the floors is beyond reasonable wear and tear. I attribute this to the Tenant. I grant the Landlord the full amount of the invoice they provided -- \$3,570 -- that approximates the amount of work involved with respect to the dimensions of the floor area in question.

The Landlord did not show actual proof of the walls needing repair and painting. I dismiss the Landlord's claim for painting costs for this reason. The Landlord did not establish that damage exists; therefore, I make no award for this piece of the Landlord's claim.

The Landlord has properly made a claim against the security deposit and have the right to do so. The Landlord is holding this amount of \$975. I order this amount deducted from the total of the rent, floor work and cleaning. Reducing the total (\$9,640.50) by \$975 brings the total monetary order to \$8,665.50. Applying the security deposit to an amount owing is permissible by s. 72(2)(b) of the *Act*.

Because the Landlord was successful in this claim for compensation, I grant them 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 \$8,765.50 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: August 17, 2022

Residential Tenancy Branch