



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for compensation for alleged damage to the rental unit by the tenant, a monetary order for unpaid rent, compensation for a monetary loss or other money owed, authority to keep the tenant's security deposit to use against a monetary award, and to recover the cost of the filing fee.

The landlord's agent (landlord), the tenant, and the tenant's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The landlord and tenant were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlord's evidence. The tenant did not file evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to the monetary compensation sought in this application, to keep the tenant's security deposit in partial or full satisfaction of a monetary award, and recovery of the cost of the filing fee?

Background and Evidence

I heard evidence the tenancy began on or about May 15, 2020, for a monthly rent of \$1,150, and a security deposit of \$575 being paid by the tenant to the landlord. The tenancy agreement shows a fixed-term through November 30, 2020, which continued on a month-to-month basis thereafter. The tenancy ended on January 1, 2021.

The rental unit is a single room occupancy unit in a hotel.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent	\$1,140.00
2. Cleaning	\$150.00
3. Wall repair and painting costs	\$630.00
4. Blind replacement	\$389.09
5. Skip tracing	\$288.75
TOTAL	\$2,597.84

In support of the application, the landlord said they did not receive any notice the tenant was vacating and did not receive the monthly rent for January 2021. Additionally, they were not successful in renting the unit for January 2021.

The landlord submitted that there was an inspection by the property manager, which showed the entire rental unit was unclean. There was no attempt to arrange a move-out inspection with the tenant as he failed to provide a written forwarding address.

The landlord submitted that they are entitled to wall repair and painting costs as there were large holes and gashes.

The landlord submitted that they had to replace the blinds at the end of the tenancy and in response to my inquiry, the landlord said they did not know how old the blinds were.

As to the skip tracer charge, the landlord submitted that the tenant failed to provide a written forwarding address and as a result, they hired a skip tracer to find an address on the tenant to serve their application.

The landlord's relevant evidence included photos of the wall damage, a move-in and move-out condition inspection report (Report), and invoices.

Tenant –

In cross-examination of the landlord, counsel had the landlord confirm they were not present for the final inspection and had no personal knowledge of the same.

Counsel asked the landlord about the blind replacement invoice and argued that it appeared a number of blinds needed to be replaced.

Counsel asked the landlord to explain why the whole suite needed to be repainted, and the landlord confirmed that other suites were repainted as well.

Counsel's examination of tenant –

The tenant said that he suffered a hand injury and the doctors said that it would be a 7-9 month recovery process. The tenant said he was dealing with ongoing school debt and asked the on-site landlord's agent if he could let his girlfriend move in to help with monthly rent. That agent immediately said no. The tenant said he then informed that agent he could not continue to live in the rental unit and left a note for her, followed up by email. The tenant said the agent was surprised, but he did tell her a week prior to leaving.

The tenant said the move-in inspection lasted on 3-4 minutes and the agent then just checked off everything. The tenant said that the room was approximately 170 sq.ft and there was no inspection of the refrigerator. The tenant said the blinds were old, metal blinds and that they were not working properly during his tenancy.

The tenant said he did cause some damage to the walls when he tried to maneuver a heavy, metal bedframe down the hallway. The tenant said there was already some wall damage at the beginning of the tenancy.

The tenant said he cleaned before he left and that any wall damage he did was in the hallway, he was willing to cover 25% of the damage and \$50 for the painting.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party making an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Unpaid rent – January 2021 –

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In this case, I find the tenant did not serve a signed, written notice to end the tenancy in a format required by the Act.

By giving insufficient notice the tenant is obligated under the Act to pay the monthly rent for January 2021, and he did not.

I therefore find the landlord submitted sufficient evidence that the tenant breached the Act by failing to give a proper written notice that he was vacating, and that the insufficient notice caused the landlord to suffer a loss of rent revenue for January 2021.

I find the landlord has established a monetary claim of **\$1,140**.

Cleaning –

I have reviewed the invoice evidence of the landlord, which I find is insufficient to prove their claim of \$150. The invoice reflects a cleaning for multiple hotel rooms for the same costs of \$142.86. I find it does not make sense to charge different units the same price for cleaning, as that would suggest each unit had the same level of uncleanliness. Additionally, the landlord did not provide photos or direct testimony to show that the rental unit was left unreasonably clean.

I find the landlord submitted insufficient evidence to support this claim and I therefore **dismiss** their claim of \$150, without leave to reapply.

Wall repair and painting costs –

After reviewing the photographic evidence and in recognition that the tenant confirmed that he did damage areas in the hallway, I find the landlord is entitled to monetary compensation from the tenant, as I find this damage was beyond reasonable wear and tear. As to the claim, I saw some damage which required repair, but I find there is insufficient evidence that the entire rental unit required re-painting. I find it notable that the landlord had several units apparently painted at the same time. However, I note

that the invoice from the landlord reflecting the wall repair and complete paint was dated January 10, 2021, but the invoice from the painter doing the work was dated March 25, 2021. This inconsistency caused me to question the landlord's evidence.

I find it reasonable that the landlord incurred a cost to repair and paint the wall that was damaged, and I find a reasonable amount is \$100. I therefore find the landlord has established a monetary claim of **\$100**.

Blind replacement –

The landlord's evidence showed that the landlord had three blinds replaced at the same time. I find it does not make sense to have three blinds replaced at the same time as that would suggest the same amount of damage. Additionally, the invoice was dated April 15, 2021, and it could very well be that other tenants damaged the blinds in the interim, as the tenancy ended on January 1, 2021. The landlord was unable to provide the age of the metal blinds.

As the useful life of blinds is 10 years under Tenancy Policy Guideline 40, I find it reasonable to conclude the landlord intended to upgrade the blinds rather than replace them due to damage. There was no photo of the blinds filed in evidence.

For these reasons, I find the landlord submitted insufficient evidence to support their claim for blind replacement and it is **dismissed**, without leave to reapply.

Skip tracer costs –

The landlord has claimed the cost of hiring a skip tracing company to locate the tenant after the tenancy ended. However, an applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. The cost of skip tracing is a choice made by the landlord, and I find the landlord has not shown the tenant violated the Act when he did not provide a written forwarding address as he was not required to do so. As a result, the landlord's claim is **dismissed** without leave to reapply.

As the landlord's application has been partly successful, I grant the landlord recovery of **\$100** for their filing fee.

I find that the landlord has established a total monetary claim of **\$1,340**, comprised of **\$1,140** for unpaid rent for January 2021, **\$100** for repair of wall damage and the **\$100** fee paid for this application.

I order that the landlord retain the security deposit of \$575 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the Act for the balance due of **\$765**.

The landlord is provided with a Monetary Order (Order) in the above terms and the tenant must be served with this Order if enforcement is necessary. 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.

Conclusion

The landlord's application for monetary compensation is partially successful. The landlord has been granted a monetary award of \$1,340, ordered to retain the tenant's security deposit of \$575, and has been granted a monetary order for the balance due of \$765.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 26, 2022

Residential Tenancy Branch