



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REAL PROPERTY MANAGEMENT
EXECUTIVES and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This proceeding dealt with a landlord's monetary claim against the tenant for compensation for unpaid and/or loss of rent, damage to the rental unit, and other damages or loss under the Act, regulations or tenancy agreement. The landlord also requested authorization to retain the tenant's security deposit.

The landlord's agent appeared at the hearing; however, there was no appearance on part of the tenant. Since the tenant did not appear at the hearing, I explored service of hearing materials upon the tenant.

The landlord's agent submitted that they obtained a Substituted Service Order ("SSO") with authorization to serve the tenant via email. On February 17, 2022 the landlord's former employee sent the proceeding documents to the tenant, as authorized in the SSO. An image of an email was uploaded as proof of service; however, I noted that I was unable to see the email address that was used for the tenant. Also, the email indicates there is an attachment(s) but I am unable to see how many attachments or what was attached. The landlord's agent stated he was uncertain as to what had been submitted by the former employee as proof of service; however, he could access the former employee's email account and provide better proof of service if given the opportunity. I authorized the landlord to submit more proof of service after the telephone call ended and I continued to hear from the landlord's agent and informed the agent that my decision would be conditional upon be satisfied the tenant was duly served.

After the teleconference call ended, the landlord's agent submitted an image showing the landlord's former employee sent the tenant and email using the approved email address for the tenant on February 17, 2022 along with four attachments. The four attachments appear consistent with documents that are in a proceeding package.

Accordingly, I am satisfied the tenant was served, as authorized in the SSO, with the proceeding package.

The landlord's agent also testified at the hearing that the landlord's evidence, along with another copy of the proceeding package, were sent to the tenant via email on September 13, 2022.

The landlord's agent acknowledged that there was no response to either of the above described emails from the tenant.

Based on the unopposed evidence as to service, I accepted that the tenant was served with the landlord's hearing materials, as authorized by the SSO, and I have admitted the evidence and proceed to consider this application.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenant and the former landlord entered into a tenancy that started on November 1, 2018. The tenant paid a security deposit of \$900.00. The monthly rent was set at \$1800.00 payable on the first day of every month.

In October 2021 the landlord conducted an inspection of the rental unit and determined the tenant had an additional unauthorized occupant residing in the rental unit. The landlord proceeded to issue a One Month Notice to End Tenancy for Cause ("1 Month Notice") on October 30, 2021 with a stated effective date of November 30, 2021. The reasons for ending the tenancy, as indicated on the 1 Month notice, was that the tenant had permitted an unreasonable number of occupants in the rental unit and the tenant had assigned or sublet the rental unit, in breach of terms 13 and 20 of the tenancy agreement. The tenant filed to dispute the 1 Month Notice and a hearing was set for January 21, 2022 (file number referenced on the cover page of this decision).

The landlord's agent testified that on December 14, 2021 the landlord found the rental unit vacant. A move-out inspection report was not prepared; however, several photographs were taken.

During the hearing that had been set for hearing on January 21, 2022, both the tenant and the landlord's agent appeared. The tenant testified that the rental unit was vacated on December 1, 2021. The landlord confirmed that the landlord had found the rental unit vacant on December 14, 2021. The Arbitrator presiding over that proceeding found the dispute concerning the 1 Month Notice to be moot since the tenant had already vacated the rental unit and the landlord had already regained possession of the unit.

The landlord submitted that upon inspection on December 14, 2021, the landlord determined that the rental unit required cleaning, junk removal and repairs. The rental unit was not in a condition to be re-rented and these matters were addressed in early January 2022. The landlord started advertising the rental unit for rent in early January 2022 and a new tenant was placed as of February 27, 2022.

Below, I have summarized the landlord's claims against the tenant:

Unpaid and/or loss of rent – December 2021 and January 2022

The landlord submitted that in disputing the 1 Month Notice the tenant essentially had the ending of the tenancy suspended until the date of the hearing. The tenant did not notify the landlord that he had vacated the rental unit and only after the neighbour informed the landlord that the tenant had vacated did the landlord discover the unit vacant on December 14, 2021. Further, the rental unit was not left clean and it was damaged. As a result of the tenant's actions, the landlord suffered from unpaid and/or loss of rent for December 2021 through February 2022 although the landlord has limited its claim to December 2021 and January 2022.

The landlord is claiming \$1800.00 for December 2021 and \$1827.00 for January 2022. The landlord stated the rent had been set to increase to \$1827.00 starting on January 1, 2022.

Late fees and NSF fees

The landlord is seeking \$25.00 for late fees and \$25.00 for NSF fees for each of the months of December 2021 and January 2022 since rent was not received for these months.

The landlord pointed to the following term in the tenancy agreement in support of these claims:

10. **ARREARS.** Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord. Although these fees are payable by the tenant to the landlord, failure to pay the rent on the due date is a breach of a material term of this Agreement. The obligation of the tenant under this Agreement and by law requires the rent to be paid on the date that it is due. For example, an excuse that the tenant does not have the rent money or will not have the rent money until a later date is not an acceptable excuse in law.

Rent for additional occupant(s)

The landlord submitted that the tenancy agreement provides for additional rent for additional occupants in the amount of \$150.00 per month.

The landlord submitted that in October 2021 an inspection of the rental unit revealed that the tenant had an additional occupant(s) residing in the rental unit. After speaking with neighbours, the landlord learned the tenant had additional occupants since early on in the tenancy. Therefore, the landlord is seeking the additional rent for one year, or \$1800.00 (calculated as \$150.00 x 12 months).

The landlord pointed to the following terms in the tenancy agreement in support of this claim:

Under term 6, it states:

Subject to clause 13, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1 or 2 above, the rent will increase by \$ 150⁰⁰ per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this Agreement or create a new tenancy.

Term 13 states:

13. **ADDITIONAL OCCUPANTS.** Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.

Junk removal, cleaning, damage

The landlord seeks recovery of the following amounts under this category:

Junk removal	\$312.90
Cleaning	\$ 1,202.25
Drywall & painting repairs	\$700.00
Maintenance repairs/time	\$378.00

The landlord submitted an estimate dated January 7, 2022 in the amount of \$312.90 for removal of junk from the property left behind by the tenant including: furniture, a mattress, garbage and the like.

The landlord submitted an estimate dated January 7, 2022 for cleaning the rental unit in the amount of \$840.00, plus carpet cleaning of \$305.00, plus taxes for a total of \$1202.25. The landlord submitted that cleaning was required nearly everywhere in the rental unit including appliances, cupboards, flooring, and other surfaces. The landlord submitted that the amount claimed it to bring the rental unit to a “reasonably clean” state.

The landlord provided an estimate dated January 4, 2022 in the amount of \$700.0 to repair wall damage. The landlord submitted that there were holes in the walls, including larger holes from mounting televisions.

The last item claimed, in the amount of \$378.00, represents the time the landlord’s agent spent travelling and attending to the rental unit to permit the various trades in to provide estimates that were included as evidence and described above.

Other than the estimates described above, I noted that I was not in receipt of a move-out inspection report or photographs. The landlord stated that several photographs were taken on December 14, 2021 which he could provide. I authorized and ordered the landlord to provide this additional evidence by October 3, 2022. The landlord provided several photographs to me on September 29, 2022. I admitted the evidence with a view to determining the veracity and reasonableness of the amounts claimed.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

Unpaid and/or loss of rent

The landlord submitted that the landlord found the rental unit vacated on December 14, 2021 after a neighbour reported it to the landlord. In the previous hearing, the tenant testified that the rental unit was vacated on December 1, 2022.

Although the landlord had served the tenant with a 1 Month Notice with an effective date of November 30, 2021, the tenant had filed to dispute the notice. As such, I accept that in disputing the 1 Month Notice, the tenant effectively suspended the ending of the tenancy until after the hearing set for January 21, 2022 and the landlord was not in a position to start searching for replacement tenants until the fate of the tenancy was determined.

The tenant vacated the rental unit before the hearing set for January 21, 2022 and, as provided under section 44(1)(d) of the Act, when a tenant vacates or abandons a rental unit the tenancy is ended. While an exact date the tenant vacated the rental unit has not been verified, I accept the tenant vacated between the dates of December 1, 2021 and December 14, 2021 and in ending the tenancy in December 2021 I find the tenant

is liable to pay rent for December 2021. Therefore, I award the landlord unpaid rent for December 2021 in the sum of \$1800.00.

As for loss of rent for January 2022, I further find the tenant liable to compensate the landlord for loss of rent for that month. As stated above, the tenant's actions suspended the ending of the tenancy and the tenant vacated the rental unit in December 2021 without advance notice to the landlord. Only after finding the rent unit vacant on December 14, 2021 was the landlord in a position to start looking for a replacement tenant. However, that is very little time to find a replacement tenant for January 2022, especially given the condition of the rental unit in which it was left by the tenant, as described in the following sections of this decision. Therefore, I find the landlord entitled to loss of rent for January 2022 from the tenant.

The landlord claimed loss of rent of \$1827.00 for January 2022; however, the landlord did not provide a copy of a Notice of Rent Increase to demonstrate the monthly rent had been lawfully increased from \$1800.00. Therefore, I limit the award for loss of rent for January 2022 to \$1800.00 based on the tenancy agreement that is before me.

Late fees and NSF fees

Under section 7(1) and (2) of the Residential Tenancy Regulations, a landlord may charge a tenant late fees and/or NSF fees as follows:

(1) A landlord may charge any of the following non-refundable fees:

...

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee

As I have already found, the tenant brought the tenancy to an end in December 2021 by vacating the rental unit and the tenant was obligated to pay rent for December 2021. Upon review of the landlord's ledger, it appears the landlord attempted to cash the tenant's post dated rent cheque for December 2021 and it was returned for insufficient funds. As such, I find the landlord entitled to a late fee or an administrative fee for the

returned cheque, but not both under regulation 7(1)(d). While a landlord may recover the service fee charged by their financial institution where a cheque is returned, the landlord did not provide evidence of the service fee they were charged by their financial institution, if anything. Therefore, I award the landlord \$25.00 for the returned cheque of December 2021.

Since the tenancy agreement came to an end in December 2021, I find the landlord was not entitled to cash the tenant's January 2022 rent cheque as the Regulations provide that post dated cheques in the landlord's possession after the tenancy ended are to be returned to the tenant. Although the landlord did not have an address at which to send the post dated cheques, the landlord was not entitled to cash the January 2022 rent cheque. As such, I find any costs associated to this deposit shall be the landlords to bear.

The requirement to return post dated cheques to the tenant after the tenancy ends is found in the Schedule of standard terms that are to be in every tenancy agreement. The Schedule is found at the end of the Residential Tenancy Regulations and includes, under the heading "Payment of Rent" the following:

(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Rent for additional occupants

The landlord seeks additional rent as provided under term 6 of the tenancy agreement. The specific paragraph in term 6 that provides for additional rent is subject to term 13 in the tenancy agreement. In reading term 13, I note that it requires that the tenant obtain the landlord's consent to have an additional occupant not listed as an occupant on the tenancy agreement reside in the rental unit.

In reading term 6 and 13 together, as they are intended to be read, I interpret the terms to give the landlord two options where there tenant has an additional occupant: give the tenant permission to have additional occupants and charge the tenant the additional rent, or move to evict the tenant for breaching term 13. There is no wording that would permit the landlord to do both for the same additional occupant.

During the tenancy, the landlord determined the tenant had an unauthorized additional occupant and the landlord clearly moved to evict the tenant by issuing a 1 Month Notice for this very reason. Accordingly, I find the landlord cannot also seek additional rent when the landlord did not give permission for the additional occupant expressly or implicitly. Rather, the landlord's actions are exactly opposite, that the landlord was of the position the tenant was in breach of the tenancy agreement and warranted an eviction notice. Therefore, I deny the landlord's request for additional rent for additional occupants.

Junk removal, cleaning and damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 of the Act also requires that a tenant leave a rental unit vacant and reasonably clean at the end of the tenancy. I interpret the obligation to leave the rental unit vacant and clean includes removal of garbage, junk and other unwanted possessions.

Upon review of the photographs and the estimates, I accept that the tenant left the rental unit with unwanted possessions in several areas of the rental unit including the fridge, cupboards, the garage and other rooms. It is also evident to me from reviewing the photographs that the entire rental unit, including the appliances, cupboards, fixtures and carpets required cleaning. I also see several large holes in walls from what appears to be installation of wall mounted television brackets and a few large gouges in the walls. Therefore, I find the landlord has satisfied me that the tenant is liable to for junk removal, cleaning and carpet cleaning and repair of the wall damage.

I award the landlord the amounts provided in the estimates of \$312.90 for junk removal, \$1202.25 for cleaning and carpet cleaning, and \$700.00 for wall repairs as I am satisfied they are reasonable based on the photographs provided to me.

I make no award for the landlord's time and expense to travel to the rental unit to provide access to the contractors. I find a landlord's travel costs and time to attend a rental unit to conduct various duties of a landlord to be more in keeping with the cost of doing business as a landlord and not an amount recoverable from a tenant.

Filing fee, security deposit and Monetary Order

The landlord's claim had merit and I award the landlord recovery of the \$100.00 filing fee from the tenant.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

I provide the landlord with a Monetary Order in the net amount calculated as follows:

Unpaid rent – December 2021	\$1800.00
Loss of rent – January 2022	1800.00
Return cheque administrative fee – Dec 2021	25.00
Junk removal	312.90
Cleaning and carpet cleaning	1202.25
Wall repairs	700.00
Filing fee	<u>100.00</u>
Sub-total	\$5940.15
Less: security deposit	<u>(900.00)</u>
Monetary Order for landlord	\$5040.15

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$5040.15.

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: October 12, 2022

Residential Tenancy Branch