



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent, AT ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence package on February 12, 2022 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with the landlord's application and evidence on February 17, 2022, 5 days after mailing. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 1, 2017, and continued on a month-to-month basis after April 30, 2018. Monthly rent was set at \$1,995.00, payable on the first of the month. The landlord collected a security deposit of \$975.00, and a pet damage deposit of \$300.00, which the landlord still holds.

A hearing was held on November 8, 2021 to deal with the tenant RC's application to cancel a 1 Month Notice to End Tenancy for Cause. The application was dismissed by the Arbitrator, and an Order of Possession was granted on November 13, 2021. The tenants failed to move out despite the issuance of the Order of Possession, and the landlord had to obtain a Writ of Possession from the Supreme Court in order to remove the tenants through the service of a bailiff on November 30, 2021.

The landlord is seeking a monetary order for the following losses associated with the tenants' failure to move out after the landlord was granted an Order of Possession. The amounts are copied from the Monetary Order Worksheet submitted by the landlord, dated January 26, 2022, at the time of filing.

Item	Amount
Bailiff	\$4,158.68
Lawyer	2,546.93
New Range	781.20
Junk Removal	420.00
Cleaning	600.00
Repairs	3,225.35
Repairs	1,660.00
Supreme Court Fee	120.00
Filing Fee	100.00
Total Monetary Order Requested	\$13,612.16

The landlord submitted documentary evidence in support of their claim, which included photos, the move-in and move out inspection report, invoices and receipts for the

services of a lawyer, cleaning, junk removal, bailiff services, repairs, and a receipt for a new range.

The landlord is seeking reimbursement of the above losses for the failure of the tenants to vacate the rental unit as required, for failing to leave the rental unit in reasonably clean and undamaged condition.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I am satisfied that the landlord provided sufficient evidence to support that the tenants failed to give peaceful and vacant possession of the rental unit to the landlord after an Order of Possession was granted to the landlord on November 13, 2021. The landlord had to suffer a monetary loss in order to obtain a Writ of Possession and remove the tenants through the service of a bailiff. Accordingly, I allow the landlord to recover the Supreme Court fee and cost of hiring a Bailiff.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the home.

I have reviewed the documents and I am satisfied that the tenants failed to leave the rental unit in reasonably clean and undamaged condition. Accordingly, I allow the landlord to recover the costs of repairs, junk removal, and cleaning.

In consideration of the landlord's claim for a new range, I am not satisfied that the evidence shows that this loss is due to the tenant's actions. Although the landlord did include photos of a dirty range, and a receipt for the removal of the old range, and receipt for a new one, I am not satisfied that the evidence shows that the tenants had damaged the range to the extent that the landlord was required to purchase a brand new one. I do not see any notations on the move out inspection report of a damaged range. For these reasons, I dismiss this claim without leave to reapply.

The landlord also filed a claim for fees paid to lawyer for their services from October 6, 2021 to November 25, 2021. The detailed invoice lists the services provided, which include assistance with filing with the RTB, reviewing RTB Rules, delivering documents, attending arbitration, and reviewing documents and the Arbitrator's decision after the last hearing. Although the landlord did provide proof to show that they incurred this expense, I am not satisfied that this expense was a necessary one, nor a loss incurred as a result of the tenants' actions or contravention of the *Act*. As noted above, the landlord has a duty to mitigate their losses, and I find that the landlord made the decision to incur the expense of hiring a lawyer for assistance with filing an application and dealing with RTB related matters. Furthermore, section 72 of the *Act* only allows the landlord to recover the filing fee, and not the other associated costs of filing an application for dispute resolution. Accordingly, I this portion of the landlord's application is dismissed without leave to reapply.

As the application had merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary awards granted in this application.

Conclusion

I issue a Monetary Order in the amount of \$9,009.03 in the landlord's favour under the following terms which allows a monetary award for money owed, as well as the losses associated with the tenants' failure to comply with the *Act*.

Item	Amount
Bailiff	\$4,158.68
Junk Removal	420.00
Cleaning	600.00
Repairs	3,225.35
Repairs	1,660.00
Supreme Court Fee	120.00
Filing Fee	100.00
Less deposits held	-1,275.00
Total Monetary Order	\$9,009.03

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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.

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 11, 2022

Residential Tenancy Branch