



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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;
- An order to be compensated for a monetary loss or other money owed 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 tenants 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 2:05 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 and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant CT a copy of the Notice of Dispute Resolution Hearing package via registered mail to the address provided as his forwarding address on March 16, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The tenant CT is deemed served with the Notice of Dispute Resolution Hearing package five days after being sent via registered mail in accordance with sections 89 and 90 of the Act.

The landlord testified that on March 16th at 11:50 p.m., she served the tenant LP with the Notice of Dispute Resolution Hearing package via email at the email address for service provided by LP on the move-out condition inspection report. The email address is recorded on the cover page of this decision. The tenant LP is deemed served with the Notice of Dispute Resolution Hearing package three days later, on March 19th in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the tenants 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 damages and lost rent?

Can the landlord retain the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on June 1, 2021 with rent set at \$1,200.00 per month which includes all utilities. Rent was payable on the first day of each month. At the commencement of the tenancy, the landlord collected a security deposit of \$600.00 which she continues to hold. A condition inspection report was done at the beginning and end of the tenancy.

The landlord was granted an Order of Possession by an arbitrator on February 24, 2022. The file number for the previous dispute is recorded on the cover page. The landlord testified that the tenants vacated the rental unit on February 28th and didn't pay any rent for the month of February.

The landlord testified that the tenant LP attended the rental unit on February 28th and signed the move-out condition inspection report with her. The landlord notes that throughout the document, she notes the unit is dirty. Also noted is "*general dirty areas all around the site, bathroom, kitchen, bedroom, windows, trims, floor, blinds, under stove, fridge*". No photos of the dirty unit were provided as evidence. The landlord points out that in the document, the tenant LP acknowledges that the tenants still owing Feb 2022 rent which is \$1,200.00. LP also agrees to deducting the entire \$600.00 security deposit to the landlord. The tenants' forwarding address is noted on the move-out condition inspection report and the tenant LP provides an email address for service.

The landlord testified she paid a cleaning company \$194.25, including GST to clean the rental unit. The landlord also paid a contractor \$420.00 including GST to patch, tape, mud, sand, scrape, paint and clean up a hole punched in the wall by the tenant CT.

Photos of the hole were provided as evidence and the broken wall is noted on the move-out condition inspection report.

Analysis

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
 - loss or damage has resulted from this non-compliance;
 - the party who suffered the damage 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.
- [the 4-point test]

Neither tenant attended the hearing to dispute the landlord's evidence or testimony.

I am satisfied the tenants were required to pay rent in the amount of \$1,200.00 for the month of February and failed to do so, contrary to section 26 of the Act. Accordingly, the landlord is entitled to compensation in the amount of **\$1,200.00** representing this unpaid rent.

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear pursuant to section 37(2)(a) of the Act. Based on the undisputed evidence before me, I am satisfied the tenants damaged the walls to the rental unit by punching a hole in it. I find this damage is beyond reasonable wear and tear and they are responsible for paying for that damage in accordance with section 67 of the Act. The landlord provided an invoice to

prove the amount of the damage and I find the amount paid to be reasonable. I award the landlord **\$420.00** to fix the damaged wall.

Lastly, section 21 of the Residential Tenancy Regulations states: In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The condition inspection report notes that at the beginning of the tenancy, the rental unit was in “good” condition. It notes that at the end of the tenancy, much of the rental unit was “dirty”. Although the landlord did not provide photographs to corroborate her claim that the unit was dirty, I rely on the condition inspection report in accordance with section 21 and the undisputed testimony of the landlord to find that the unit was not left reasonably clean as required by section 37(2)(a) of the Act. Accordingly, the landlord is entitled to recover the cost of cleaning the unit at \$194.25 – an amount I find reasonable.

As the landlord’s application was successful, the landlord is entitled to recover the filing fee of \$100.00. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain the tenant's security deposit in the amount of \$600.00 in partial satisfaction of the monetary order being awarded to her.

Item	Amount
February rent	\$1,200.00
Cost to repair damaged wall	\$420.00
Cleaning costs	\$194.25
Filing fee	\$100.00
Less security deposit	(\$600.00)
Total	\$1,314.25

Conclusion

I award the landlord a monetary order in the amount of \$1,314.25

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 31, 2022

Residential Tenancy Branch