



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DRIFTWOOD 333 HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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 tenant 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 2:10 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, represented by MB (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he personally served the tenant with the Notice of Dispute Resolution Hearing package on April 14, 2022. On that day, the tenant refused to take the package from the landlord in his hand, so the landlord left the package in the tenant’s car through an open window. The landlord called a witness, KM who provided corroborative testimony and signed a proof of service document. I am satisfied the tenant was personally served with the Notice of Dispute Resolution Hearing package in accordance with section 89 of the *Act*.

This hearing was conducted in the absence of the tenant 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?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on April 1, 2021 with rent set at \$1,100.00 per month, payable on the first day of each month. A security deposit of \$550.00 was collected from the tenant which the landlord continues to hold. A condition inspection report was done at the commencement of the tenancy.

The tenancy ended by means of a mutual agreement to end tenancy arrived at before an arbitrator at a hearing on February 15, 2022. The file number for the previous dispute is recorded on the cover page of this decision. The landlord testified that the effective time and date for the tenancy to end was 5:00 p.m. on March 31, 2022.

The landlord testified that he arranged to do a move-out condition inspection report with the tenant at 5:00 on March 31st, however the tenant was not fully moved out at that time. At approximately 7:00 on March 31st, the tenant gave the keys to the building manager and didn't stay for the condition inspection report to be done. The landlord submitted a written statement from a witness who accompanied the building manager immediately after the tenant vacated the unit who describes the unit as unclean and dirty. The carpets, kitchen, fridge, oven and stovetop were dirty. It was obvious the carpets hadn't been vacuumed or shampooed, according to the written statement.

The landlord's building manager cleaned the unit after the tenant left and the landlord seeks to recover the building manager's wages of \$35.00 per hour for 8 hours to clean the unit. The landlord claims an additional \$400.00 for an additional 8 hours at \$50.00 per hour for the building manager, who he claims is a certified carpenter, to repair a dent purposely made in the ceiling of the unit by the tenant. The landlord paid a carpet cleaning company \$60.00 to clean the carpets and the landlord provided an invoice for that. Lastly, the landlord seeks an additional \$100.00 for cleaning products and paint, however no receipts for the products were provided as evidence.

The landlord testified that the tenant did not pay rent for the month of March. She justified to the landlord that she wouldn't pay rent because she was "evicted".

The landlord also seeks to recover rent for the month of April because the tenant would not allow him to show the unit during the last few days in March. The landlord provided copies of the 24-hour notices to enter, indicating he properly gave the tenant notice but those were refused. In evidence, the landlord also provided screenshots of text messages between the landlord and the tenant whereby the tenant states she doesn't want anyone in the unit because she is sick. The landlord testified that the texts he provided were from March 23rd to March 29th. The last request to show the unit comes from the landlord on March 24th. The landlord testified that the prospective tenant didn't show up for that showing. In the texts the landlord tells the tenant that the building manager will reschedule the showing.

The landlord does not know how many more showings were planned beyond March 24th because it was more than 6 months ago. The rental unit is located in a popular, well run building, according to the landlord. Despite this, the landlord was unable to find a tenant for April 1st and the unit remained vacant for the month of April. The landlord testified that he raised the rent from the \$1,100.00 the tenant was paying to current market rates of \$1,400.00 which the new occupant of the unit pays.

Analysis

Section 26 states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. There is no evidence before me that the tenant had any right to deduct any portion of the rent. I find the tenant was obligated to pay rent in the amount of \$1,100.00 to the landlord for the month of March and failed to do so. I award the landlord compensation in the sum of **\$1,100.00** pursuant to section 67 of the Act.

The tenancy ended on March 31, 2022. The landlord is not entitled to rent after the tenancy has ended but may seek compensation for losses sustained for the unit remaining vacant due to a breach of the act by the tenant pursuant to section 67. The landlord provided text messages indicating that on March 23rd the tenant refused a showing because her son was sick. In the same texts however, the tenant relents and allows the landlord a showing between 6:00 and 6:30 on March 24th provided everyone wears a mask. The prospective tenant didn't show up and the landlord noted he would reschedule. Between March 24th and March 29th, the landlord does not seek any further showings and in testimony, the landlord does not recall how many prospective tenants wanted to view the unit. On March 29th, the tenant refused any further showings because the landlord accuses the tenant of marking and scratching the building.

The evidence before me is insufficient to establish the landlord's narrative that the tenant's actions caused a loss of rent. The landlord was aware, since February 15th (the day the parties mutually agreed to end the tenancy) that the unit would be vacant as of March 31st. The landlord could have commenced the search for new tenants as of that date. There is no evidence before me that he did so. Second, the landlord testified that he increased the rent for the unit from the \$1,100.00 the tenant was paying to \$1,400.00, making it less attractive to prospective tenants. Third, and most compelling, the landlord made little or no effort to show the unit between March 24th and March 29th. I cannot attribute the landlord's inability to find a tenant for April 1st to any breach of the Act, regulations or tenancy agreement by the tenant and I dismiss this portion of his application.

Pursuant to section 37, when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Residential Tenancy Branch Policy Guideline PG-1 was written to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The tenant did not attend this hearing to dispute the landlord's testimony that the unit was left dirty or the written statement of ER, the person who viewed the unit at right after the tenant vacated it. I also viewed the photographs provided by the landlord to

corroborate his claim that the unit was left dirty and unclean at the end of the tenancy. It was apparent that the tenant left the stove uncleaned, the door lock broken, and the ceiling damaged. I find this damage exceeds reasonable wear and tear.

I accept the landlord's evidence that he paid **\$280.00** to have the unit cleaned for 8 hours. I also accept that the landlord paid a carpet cleaning company **\$60.00** to clean the carpets. However, I find the \$400.00 to repair the dent in the ceiling and the repair to the door lock to be unreasonably overpriced. I award the landlord a further **\$200.00** as compensation for those repairs. The landlord did not provide any receipts for the cleaning products and painting and those claims are dismissed.

The landlord may recover the **\$100.00** filing fee as the majority of his claim was successful. In accordance with the offsetting provision of section 72, the landlord may retain the tenant's (**\$550.00**) security deposit in partial satisfaction of the monetary order.

Item	amount
March 2022 rent	\$1,100.00
Cleaning	\$280.00
Carpet cleaning	\$60.00
Lock and ceiling repair	\$200.00
Filing fee	\$100.00
Less security deposit	(\$550.00)
Total	\$1,190.00

Conclusion

I award the landlord a monetary order in the amount of **\$1,190.00**.

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: November 09, 2022

Residential Tenancy Branch