



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

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord January 29, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and their evidence were served on the Tenant in person March 05, 2022. The Landlord submitted a photo of the Tenant holding the package.

Based on the undisputed testimony of the Landlord and photo, I am satisfied the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”) on March 05,

2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to compensation for damage to the rental unit?
4. Is the Landlord entitled to keep the security or pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Time preparing for hearing	\$400.00
2	Filing fees for two other RTB files	\$200.00
3	Unpaid rent	\$2,396.45
4	Loss of rent	\$5,700.00
5	Painting due to smoking in rental unit	\$1,326.72
6	Garbage left in rental unit	\$1,630.76
7	Missing dead bolt and door handle	\$100.00
8	Missing doorbell	\$50.00
9	Damaged front door, jam and trim	\$1,075.00
10	Stains on carpet	\$2,287.15
11	Hole in window	\$794.52
12	Damage to garage door	\$2,389.00
13	Damage to interior doors	\$2,080.00

14	Holes in drywall	\$2,797.89
15	Damage to stucco on house	\$62.67
16	Broken fence post	\$80.00
17	Damaged light fixtures	\$120.00
18	Damaged light in master bedroom	\$35.00
19	Damage to workbench in garage	\$590.00
20	Damage to fireplace and walls	\$1,000.00
21	Landlord's labour to address above (153.5 hours)	\$3,070.00
22	Filing fee	\$100.00
	TOTAL	\$28,285.16

The Landlord submitted part of a written tenancy agreement between the parties. The Landlord testified that the tenancy started February 01, 2019, and was a month-to-month tenancy. The Landlord testified rent was \$1,900.00 per month due on the first day of each month. The Tenant paid an \$850.00 security deposit and \$850.00 pet damage deposit.

The Landlord testified as follows.

The tenancy ended August 05, 2021. The tenancy ended pursuant to a One Month Notice issued by the Landlord. The Landlord obtained an Order of Possession for the rental unit from the RTB based on the One Month Notice. The Landlord served the Order of Possession on the Tenant and the Tenant moved out August 05, 2021.

The Tenant never provided their forwarding address to the Landlord.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security or pet damage deposits.

The parties did a move-in inspection and completed a Condition Inspection Report (the "CIR"). Both parties signed the CIR. The Tenant kept a copy of the CIR on the same date as the inspection.

In relation to a move-out inspection, the Tenant was supposed to move out by the end of July. On August 01, 2021, the Tenant told the Landlord they required more time to move out. The Tenant moved out August 04, 2021.

The parties had a verbal agreement to do a move-out inspection August 03, 2021. The Landlord issued the Tenant a Notice of Final Opportunity in relation to the move-out inspection. The Tenant did not attend the inspection. The Landlord did a move-out inspection but did not complete the CIR.

The Landlord kept the pet damage deposit due to some of the damage in the rental unit being caused by the Tenant's pet.

The Landlord is claiming for the following loss and damage caused by the Tenant.

Item 1, the time it took the Landlord to prepare for the hearing.

Item 2, to recover filing fees for two different RTB files.

Item 3, to recover rent for July and five days in August. The Tenant did not pay rent for July or August 01 to 05, 2021. The Tenant did not have authority under the *Act* to withhold rent.

Item 4, for loss of rent for August, September and October 2021, due to the state of the rental unit at the end of the tenancy and the time it took to address the damage. The rental unit could not be re-rented until November 01, 2021. The rental unit was re-rented December 24, 2021.

Item 5, to address damage in the rental unit due to the Tenant smoking in the rental unit. The smoking caused damage and a lingering smell in the rental unit.

Item 6, to remove garbage the Tenant left in the rental unit.

Item 7 and 8, to replace a missing dead bolt, door handle and doorbell at the end of the tenancy.

Item 9, to address damage caused to the front door, door jam and trim.

Item 10, to replace carpet in two bedrooms and the living room due to stains caused by the Tenant.

Item 11, to replace a broken window.

Item 12, to address damage caused to the garage door. However, the Landlord has not replaced the panels and the cost is a quote. The Landlord did level the garage door and instal a new opener due to the damage which took four hours. The Landlord also spent two hours with a contractor to obtain the quote.

Item 13, to fix damaged doors in the rental unit.

Item 14, to repair wall damage throughout the rental unit. The Landlord hired someone to repair the damage.

Item 15, to purchase material to repair the damage to the stucco around the garage.

Item 16, to replace the fence the Tenants broke with a cedar hedge.

Item 17 and 18, to replace broken lights and light fixtures.

Item 19, to replace the workbench in the garage that was damaged and full of insects due to garbage being left in it at the end of the tenancy. The cost claimed is the approximate cost of building a new workbench.

Item 20, to compensate for the loss in value of the rental unit due to damage to the fireplace including florescent yellow marker on the fireplace and holes drilled in the fireplace. The value of the house has decreased by \$1,000.00 due to the damage.

Item 21, to compensate for labour costs involved in addressing the damage in the rental unit. It took the Landlord 153.5 hours to address the damage. The Landlord is seeking \$20.00 per hour.

The Landlord submitted the following relevant documentary evidence:

- Photos
- Move-in CIR
- Invoices, receipts, quotes and financial statements
- Text messages with a photo of the Notice of Final Opportunity

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the Landlord about a move-in inspection, I find neither party extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Based on the text message and photo of the Notice of Final Opportunity in evidence, I find the parties verbally agreed to do a move-out inspection August 03, 2021, and the Landlord issued the Notice of Final Opportunity for August 03, 2021, pursuant to the verbal agreement. Pursuant to section 17 of the *Regulations*, the Landlord had to provide two different opportunities for a move-out inspection. Here, the Landlord offered one opportunity, August 03, 2021. I find the Landlord did not offer the Tenant two opportunities to do a move-out inspection as contemplated by section 17 of the *Regulations* and section 36 of the *Act*. I find the Tenant did not extinguish their right in relation to the security or pet damage deposits pursuant to section 36 of the *Act*. I find the Landlord did extinguish their right to claim against the security and pet damage deposits for damage to the rental unit pursuant to section 36 of the *Act* by not giving the Tenant two opportunities to do a move-out inspection and by not completing a move-out CIR.

However, section 38(1) of the *Act* triggers return of security and pet damage deposits. The Landlord had 15 days from the later of the end of the tenancy or the date they received the Tenant’s forwarding address in writing to repay the deposits or file a claim against them.

I accept the undisputed testimony of the Landlord that the Tenant never provided them with a forwarding address. Therefore, section 38(1) of the *Act* has not been triggered and the Landlord was permitted to claim against the security and pet damage deposits when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

Sections 26 and 57 of the *Act* state:

26 (1) 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.

57 (3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 37 of the *Act* states:

(2) 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...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

In relation to Item 1, parties are not entitled to compensation for the time it takes them to prepare for RTB hearings including obtaining evidence and serving other parties. This claim is dismissed without leave to re-apply.

In relation to Item 2, recovery of filing fees must be dealt with on the RTB files they were paid on. The Landlord is not now entitled to recover filing fees paid for different RTB files. This claim is dismissed without leave to re-apply.

For the remainder of the claims, I accept the Landlord's undisputed testimony, undisputed position and undisputed documentary evidence and, based on these, I find the following.

In relation to Item 3, I accept the Tenant failed to pay rent for July and August 01 to 05, 2021. I accept the Tenant did not have authority under the *Act* to withhold rent. The Landlord testified that the Tenant moved out August 04, 2021, and August 05, 2021. The Application states the tenancy ended August 05, 2021, and I accept this. I award the Landlord the amount claimed.

In relation to Item 4, I accept the Tenant left the rental unit in such a state that numerous areas of damage had to be fixed and addressed at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept it took three months for the Landlord to fix and address the damage so the rental unit could be re-rented. I accept the amount claimed is reasonable because the Tenant did not appear at the hearing to dispute the amount. I award the Landlord the amount claimed.

I accept the Tenant breached section 37 of the *Act* by leaving the rental unit dirty, unclean or damaged as follows:

- Item 5, by smoking and causing damage to the rental unit
- Item 6, by not removing garbage at the end of the tenancy
- Item 7 and 8, by damaging or removing the dead bolt, door handle and doorbell
- Item 9, by damaging the front door, door jam and trim
- Item 10, by staining carpet in two bedrooms and the living room
- Item 11, by breaking a window
- Item 12, by damaging the garage door
- Item 13, by damaging doors in the rental unit
- Item 14, by causing wall damage throughout the rental unit
- Item 15, by damaging the stucco around the garage
- Item 16, by breaking the fence around the rental unit
- Item 17 and 18, by breaking or not replacing broken light and light fixtures
- Item 19, by damaging and failing to clean the workbench
- Item 20, by damaging the fireplace

I accept the Landlord had to spend time repairing items, replacing items and fixing items. I accept the Landlord had to hire others to address the damage in the rental unit. I accept the damage devalued the rental unit. I accept the Landlord spent 153.5 hours addressing the issues in the rental unit at the end of the tenancy.

I accept the amounts and valuation of the losses and damages as claimed by the Landlord.

I accept the amounts and valuation of the losses and damages are reasonable because the Tenant did not appear at the hearing to dispute this.

I award the Landlord the amounts claimed.

In relation to the filing fee, given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Time preparing for hearing	-
2	Filing fees for two other RTB files	-
3	Unpaid rent	\$2,396.45
4	Loss of rent	\$5,700.00
5	Painting due to smoking in rental unit	\$1,326.72
6	Garbage left in rental unit	\$1,630.76
7	Missing dead bolt and door handle	\$100.00
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16	Broken fence post	\$80.00
17	Damaged light fixtures	\$120.00
18	Damaged light in master bedroom	\$35.00
19	Damage to workbench in garage	\$590.00
20	Damage to fireplace and walls	\$1,000.00
21	Landlord's labour to address above (153.5 hours)	\$3,070.00
22	Filing fee	\$100.00
	TOTAL	\$27,685.16

Pursuant to section 72(2) of the *Act*, the Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$25,985.16 pursuant to section 67 of the *Act*.

Conclusion

The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$25,985.16. This Order must be served on the

Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 15, 2022

Residential Tenancy Branch