



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of hearing and evidence by registered mail sent on February 11, 2022 to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on February 16, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The landlord testified that they served the tenant with the new notice of hearing and Review Consideration Decision of September 29, 2022 by registered mail sent on October 4, 2022 to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on October 9, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the original decision be affirmed, amended or replaced?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began on August 1, 2021. The monthly rent was \$1,050.00 payable on the first of each month. A security deposit of \$525.00 and pet damage deposit of equal amount were collected at the start of the tenancy and are still held by the landlord.

The tenant failed to pay full rent as required under the signed tenancy agreement on January 1, 2022. The landlord issued a 10 Day Notice to End Tenancy dated January 3, 2022. The tenant failed to pay the rental arrear, dispute the notice or vacate on the effective date of the notice and overheld until eventually vacating on January 19, 2022. The total rental arrear for this tenancy as at the date of the hearing is \$525.00.

The parties completed a condition inspection report at both the start and end of the tenancy. The landlord found various deficiencies requiring cleaning, repairs and work at the end of the tenancy attributable to the tenant. A copy of the condition inspection report signed by the parties was submitted into evidence. The landlord says the total cost of their work is \$552.00. The landlord submitted photographs of the damage and the inspection report as well as a breakdown of the cost of work.

The landlord says that due to the tenant's failure to vacate the rental unit in accordance with the 10 Day Notice and the cleaning required they were unable to rent the unit to new occupants until March 1, 2022. The landlord testified that they took reasonable steps in advertising the suite, interviewing candidates and checking references. The landlord seeks a monetary award of \$1,050.00 for the loss of rental income for February 2022.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that rent is payable under the tenancy agreement in the amount of \$1,050.00 on the first of each month. I accept the evidence that the tenant failed to pay full rent as required and there is an arrear of \$525.00 for this tenancy. I therefore issue a monetary award in the landlord's favour in that amount.

I accept the undisputed evidence of the landlord that the rental unit required some cleaning and work to restore to its pre-tenancy condition. I am satisfied with the preponderance of evidence including the signed condition inspection report prepared by the parties, the various photographs of the suite and the breakdown of costs and work submitted by the landlord. I find the amount claimed by the landlord to be reasonable and commensurate with the nature of the work. I therefore find the landlord is entitled to a monetary award in the amount claimed of \$552.00.

I accept the evidence of the landlord that, despite taking reasonable efforts in cleaning and preparing the suite, they were unable to find a new occupant until March 1, 2022 and suffered some rental income losses. I find that the losses are attributable to the tenant's failure to vacate the rental unit in accordance with the 10 Day Notice or clean the suite to restore to its pre-tenancy condition. I find the landlord's description of efforts taken to be reasonable. I therefore find that the landlord is entitled to a monetary award in the amount of \$1,020.00, the equivalent of one month's rent.

As the landlord was successful in their application, they are also entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I find it appropriate to replace the decision of September 27, 2022 and replace it with this decision.

I issue a monetary order in the landlord's favour in the amount of \$1,177.00, representing their monetary award, recovery of filing fee and allowing for retention of the deposits. The tenant must be served with this Order as soon as possible. Should the tenant 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 review 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 3, 2022

Residential Tenancy Branch