



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order of \$11,650 for unpaid rent or utilities, damages to the unit, site or property, and to recover the cost of the filing fee.

The landlord and an agent/translator for the landlord, YXC (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord and agent were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 13, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on the tenant KD by registered mail on April 16, 2022. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website, the Hearing Package was signed for by tenant KD on April 19, 2022. Therefore, I find tenant KD was sufficiently served as of April 19, 2022, which was the date that the tenant signed for and accepted the Hearing Package.

Regarding tenant TW, the landlord applied for an order for substituted service by email, which was granted by an adjudicator on June 2, 2022. The email from the landlord to tenant TW was submitted in evidence and is dated June 6, 2022. Pursuant to section 44 of the *Residential Tenancy Regulation*, documents served via email are deemed served 3 days after they are mailed. Therefore, I find that tenant TW was deemed served as of June 9, 2022.

As neither tenant attended the dispute resolution hearing, and given the above, I find this application to be unopposed by the tenants as I find the tenants were sufficiently served in accordance with the Act. Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), applies and states:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Given the above, I find this application to be unopposed by the tenants and accordingly, the hearing proceeded without the tenants present.

Preliminary and Procedural Matters

At the outset of the hearing, the agent stated that due to the tenants failing to provide their written forwarding address, the landlord is not longer seeking to offset any amount owing with the tenants' security deposit. Accordingly, I will not consider the security deposit further in this decision.

The landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to both tenants at the email addresses provided by the landlord for the tenants.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on January 1, 2018 and ended on April 3, 2022 when the tenants vacated the rental unit. Originally, monthly rent was \$4,500 per month and was due on the first day of each month. The agent indicated that rent was increased twice during the tenancy to the most recent amount per month of \$4,650.

The landlord's monetary claim of \$11,650 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid January 2022 rent	\$4,650
2. Unpaid February 2022 rent	\$4,650
3. Damages to rental unit/property	\$2,250
4. Filing fee	\$100
TOTAL	\$11,650

The landlord testified that the rental unit was brand new at the start of the tenancy. The landlords stated that the tenancy was supposed to end on March 31, 2022 by way of a signed Mutual Agreement, however, the tenants did not vacate until April 3, 2022.

Regarding items 1 and 2, the agent stated that rent of \$4,650 per month was not paid by the tenants for January and February of 2022. The landlord is seeking unpaid rent of \$9,300 for January and February 2022 unpaid rent as a result.

Regarding item 3, the landlord has claimed \$2,250 for damages to the rental unit. The landlord submitted an invoice for \$2,415 including tax and were reminded that the maximum claim for this item was \$2,250 as listed on their application, and that I would not increase the monetary claim at the hearing as I find that would be prejudicial to the tenants who were not served with an amended application for additional money owing.

The invoice for item 3, states the following in part:

INVOICE / FA	QUANTITY / QUANTITE	DESCRIPTION	PRICE / PRIX	AMOUNT / MONTANT
		Touch-up damages on walls, trims, stairs, etc (7 colors of paint)		2,300.00
		Add missing vac covers		115.00
		<i>[Signature]</i>		2,415.00

The agent presented 18 colour photos submitted in evidence to support the damage to the rental unit, that the landlord stated was caused by the tenants. The agent stated that the tenants failed to attend the scheduled move-out condition inspection and as a result,

the landlord completed the outgoing condition inspection report without the tenants present. The end of tenancy condition is listed as follows:

Z. End of Tenancy

List Damage to the rental unit or residential property for which the tenant is responsible:

1. There're more than 260 wall ~~dent~~ dents that need to be repaired and painted. That will require 7 colors of paints plus labours.
2. more than 10 wall outlets miss covers.
3. Front door glass crack. 4. Bathroom mirror crack.
4. other damages such as front pillar dents, etc

The filing fee will be addressed later in this decision.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord via their agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the Hearing Package and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful in the amount of **\$11,650**, which includes the recovery of the cost of the filing fee pursuant to section 72 of the Act in the amount of \$100 as the landlord's application is successful. I have considered the undisputed testimony of the landlord via their agent and that the application was unopposed by the tenants.

I find the tenants breached section 26 of the Act by failing to pay \$4,650 for January 2022 rent and \$4,650 for February 2022 rent. I also find that the landlord has provided sufficient evidence to support that the tenants caused \$2,250 in damages to the rental unit, and I find that all damages exceed normal wear and tear. Therefore, I find the tenants breached section 37(2)(a) of the Act which applies and states:

37(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, and
[emphasis added]

I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenants to the landlord of **\$11,650**.

Conclusion

The landlord's application is fully successful.

The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$11,650. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to all parties. The monetary order will be emailed to the landlord only for service on the tenants.

The tenants are cautioned that they can be held liable for all costs related to enforcing the monetary order including, but not limited to, court fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 13, 2022

Residential Tenancy Branch