



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$150.00 for unpaid rent or utilities pursuant to section 67;
- a Monetary Order of \$775.00 for damage that the Tenant, their pets or their guests caused during the tenancy pursuant to sections 32 and 67;
- a Monetary Order of \$3,100.00 as compensation for monetary loss or other money owed pursuant to section 67;
- authorization to keep the Tenant's security and/or pet damage deposit pursuant to section 72; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 2:06 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed he had sent the notice of dispute resolution proceeding package and his documentary evidence (collectively, the “NDRP Package”) to the Tenant via registered mail. The Landlord testified that the Tenant had told him she was moving in with her boyfriend’s parents. The Landlord testified that he obtained their address (referenced on the cover page of this decision) from the Tenant’s cousin, who is his tenant in the upper suite. The Landlord submitted a registered mail tracking number in support (referenced on the cover page of this decision). Tracking records indicate that the package was sent on April 24, 2022, was not picked up, and was returned to the sender on May 27, 2022. The Landlord testified that he had emailed the Tenant to remind her about this hearing (at an email address that the parties had used to correspond during the tenancy, referenced on the cover page of this decision). The Landlord testified that he had also communicated with the Tenant via text messages.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Landlord served the Tenant with the NDRP Package in accordance with sections 88(c) and 89(1)(c) of the Act. Based on the Landlord’s testimony, I find the Tenant knew or reasonably ought to have known about this hearing. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the NDRP Package on the fifth day after mailing, or April 29, 2022.

Having found the Tenant to be deemed served with notice of this hearing, I directed that this hearing continue in the Tenant’s absence.

Issues to be Decided

1. Is the Landlord entitled to \$150.00 for unpaid rent or utilities?
2. Is the Landlord entitled to \$775.00 for damage that the Tenant, their pets or their guests caused during the tenancy?

3. Is the Landlord entitled to \$3,100.00 as compensation for monetary loss or other money owed?
4. Is the Landlord entitled to recover the filing fee and to keep the Tenant's security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 1, 2021 was month-to-month. Rent was \$1,550.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$775.00, which is held by the Landlord. The Landlord submitted a copy of the tenancy agreement into evidence.

The Landlord's application indicates that on April 1, 2022, the Landlord received a text message from the Tenant informing him that she had already moved out of the rental unit. The Landlord argued that the Tenant did not give sufficient notice, so the Tenant owed two months of rent. The Landlord referred to text message correspondence between the parties discussing this payment. The Landlord confirmed that the rental unit was re-rented to new tenants on May 1, 2022 at \$1,550.00 per month.

The Landlord testified that the Tenant had left behind the rental unit unsanitary conditions and damaged with various holes in doors and walls. The Landlord testified that he had to purchase a new door. The Landlord submitted photographs of the rental unit into evidence.

The Landlord testified that he did most of the repair work himself and received help from friends. The Landlord testified that the repair cost was \$650.00 so far, and that there is still painting to be done. The Landlord submitted on his monetary order worksheet that the total estimate for cleanup and repairs is \$775.00.

The Landlord also testified that the Tenant had owed \$150.00 in rent for March 2022, which the Tenant had agreed to repay over a period of three months but never repaid. The Landlord stated that he does not recall how the Tenant had asked to defer this amount, but it was probably via text message.

The Landlord's evidence includes a screenshot of a text message from the Tenant dated Wednesday, December 15 (presumably 2021), which states as follows (portion redacted for privacy):

Hi I get \$1500 on S.A. that's my rent & support together. I didn't get work at [company] again. It's too far from home now & have no vehicle or license. Just wanted to let you know. My child tax, use for food. I thought I would have had enough so didn't save \$50 out of child tax. So I owe you when I can? Hope can talk to you more about it.

The Landlord testified that the Tenant would get caught up on the rent owing but did not pay the \$150.00 owed for March 2022. The Landlord acknowledged that he did not issue a 10 day notice to end tenancy for unpaid rent to the Tenant and was planning to wait until April 2022 to see if the Tenant would pay.

Analysis

1. Is the Landlord entitled to \$150.00 for unpaid rent or utilities?

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Landlord's testimony under oath that the Tenant owed \$150.00 in unpaid rent from March 2022, which the Tenant had agree to repay in installments of \$50.00 over three months. I further accept the Landlord's undisputed testimony that the Tenant did not do so.

Pursuant to section 67 of the Act, I order the Tenant to pay \$150.00 to the Landlord for unpaid March 2022 rent.

2. Is the Landlord entitled to \$775.00 for damage that the Tenant, their pets or their guests caused during the tenancy?

Section 32(3) of the Act states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I have reviewed photographs submitted by the Landlord and find that they show various damage in the rental unit, including:

- large holes in multiple walls and doors throughout the rental unit, some of which appear to be covered by paper or putty
- large sections of walls that are spotty and discoloured, which appear to have had numerous small holes filled in
- missing bathroom cabinet door

I accept the Landlord's undisputed evidence that rental unit was left damaged by the Tenant as shown in the photographs submitted. Based on these photographs, I find the \$775.00 requested by the Landlord to be a reasonable amount for repairs.

Pursuant to section 67 of the Act, I order the Tenant to pay \$775.00 to the Landlord as compensation for damage to the rental unit.

3. Is the Landlord entitled to \$3,100.00 as compensation for monetary loss or other money owed?

The Landlord submits that the Tenant is liable for April and May 2022 rent because the Tenant did not give any advance notice before moving out of the rental unit.

Based on the Landlord's evidence, I find the Tenant informed the Landlord via text on April 1, 2022 that she had already moved out.

Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the

month that rent is payable under the tenancy agreement. In other words, if rent is due on the first day of the month in a month-to-month tenancy and the tenant is giving notice to end the tenancy on April 1, 2022, the earliest possible effective date of that notice would have been May 31, 2022.

In this case, I find the Tenant had vacated the rental unit without proper notice to the Landlord and is liable to the Landlord for the Landlord's loss of rental income during the notice period.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3") states:

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

Policy Guideline 3 further states:

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.

I find the Landlord was able to re-rent the rental unit for the same amount of rent to new tenants starting May 1, 2022. I find the Landlord acted reasonably and was able to fully mitigate his loss of rental income for the month of May 2022.

Overall, I find the loss suffered by the Landlord due to the Tenant's breach of section 45(1) of the Act to be loss of April 2022 rent.

Accordingly, I order the Tenant to pay \$1,500.00 to the Landlord for the Landlord's loss of April 2022 rent under section 67 of the Act.

4. Is the Landlord entitled to recover the filing fee and to keep the Tenant's security deposit?

The Landlord has been generally successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the Tenant's \$775.00 security deposit held by the Landlord in partial satisfaction of the total amount awarded in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent for March 2022	\$150.00
Loss of April 2022 Rent	\$1,550.00
Damage to Rental Unit	\$775.00
Filing Fee	\$100.00
Less Security Deposit	- \$775.00
Total Monetary Order for Landlord	\$1,800.00

Conclusion

The Landlord is authorized to retain the Tenant's \$775.00 security deposit in partial satisfaction of the total awarded in this application.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,800.00** for the balance awarded in this decision. 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 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: January 18, 2023

Residential Tenancy Branch