



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to

make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Service of Landlords Evidence

This matter was originally scheduled for September 1, 2022. At that time, the tenant had moved from the last known address and was not served the landlord's evidence. The parties agreed at that time to have the landlord re-serve the evidence to the tenant to an address provided by the tenant at that hearing. The landlord served all of their documentary evidence to that address by registered mail on December 3, 2022 and provided proof of such. The item was refused, however, the tenant testified that she didn't do that and that she moved again.

The tenant was aware of this documentation but did not take steps such as contacting Canada Post to file a change of address so that her mail could be forwarded to her. In addition, the tenant stated that the address was the home of her cousin. The tenant testified that she takes responsibility for not providing her new address. I find that the landlord took all reasonable steps to serve the tenant and the hearing proceeded and completed on that basis.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2019 and ended on December 31, 2021. The tenant was obligated to pay \$1850.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$912.50 security deposit and a \$912.50 security deposit which the landlord still holds. The landlord testified that the tenant participated in the written condition move in inspection, but not the move out despite being given numerous opportunities to do so in writing. The landlord testified

that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenant incurred numerous strata fines that remain unpaid along with a missing parking pass and unpaid hydro. The landlord testified that the following items were damaged by the tenant that required repairing; flooring, painting and wall damage, window screens, light bulbs, supplies, curtain rods, fridge door, bathtub damage, patio screen door, bifold door tracking, outlet, thermostat, bathroom lock and blinds. The landlord testified that the tenant agreed at the move in inspection that the unit was in very good condition without any deficiencies. The landlord testified that the tenant has attempted to avoid responsibility throughout this process.

The landlord is applying for the following:

1.	Repairs	\$8961.70
2.	Liquidated Damages	3650.00
3.	Cleaning	940.00
4.	Strata fines and chargebacks	2000.00
5.	Missing parking pass	50.00
6.	Hydro	112.37
7.	Skip Tracer	341.50
8.	Loss of Rent Jan1-15, 2022	912.50
9.	Filing Fee	100.00
10.		
	Total	\$17,068.07

The tenant gave the following testimony. The tenant testified that the unit had much of the damage claimed at move in. The tenant specifically pointed out that the kitchen cabinets were peeling, the tub had a large dent in it, the blinds and screens were in poor condition and that the bifold door in the bedroom was falling off. The tenant testified that she lived there for two and half years and that much of this was from just everyday living. The tenant testified that she doesn't really know about leases and contracts but should have paid more attention to the details. JV testified that the unit had deficiencies throughout the tenants stay including the kitchen cabinets, bifold door, blinds and patio.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

It is worth noting that the tenant stated that she disagreed with the landlords claim, but then stated she takes responsibility for some of the damages, but then changed her position again to disputing it in full. The tenant was contradictory in providing evidence and would shapeshift her testimony to her benefit when challenged. The landlord provided extensive documentation that is too voluminous to reproduce here, along with receipts, condition inspection reports and photos to support their application.

Repairs

I do not accept the tenants' position that the damage was normal for a two- and half-year tenancy. I find that the damage was excessive and far beyond normal wear and tear for that time frame. The landlord provided extensive documentation, receipts, condition inspection reports and photos to support this claim, accordingly; I find that the landlord is entitled to \$8961.70.

Liquidated Damages

The landlord stated that as part of their tenancy agreement, the tenant is responsible for the equivalent of two months of rent if they end the fixed term early. The landlord submits that the one-year term began on July 1, 2021 but ended early on December 31, 2021. I find that this term of the tenancy agreement is unconscionable and unenforceable. The landlord stated that this is not a penalty, however I find that it clearly is. The landlord did not provide sufficient evidence to support the amount sought. He stated it was for the "trouble" of turning over a tenancy and getting new tenants. I dismiss this portion of the landlords claim.

Cleaning

The landlord provided extensive documentation, receipts, condition inspection reports and photos to support this claim, accordingly; I find that the landlord is entitled to \$8961.70.

Strata fines

The landlord provided documentation to support this claim, accordingly; I find that the landlord is entitled to \$2000.00.

Parking pass

The landlord provided documentation to support this claim, accordingly; I find that the landlord is entitled to \$50.00.

Hydro

The landlord provided documentation to support this claim as noted in the tenancy agreement, accordingly; I find that the landlord is entitled to \$112.37.

Skip tracer

The landlord provided documentation and receipt to support this claim, accordingly; I find that the landlord is entitled to \$341.50.

Loss of Rent Jan1-15, 2022

The landlord provided documentation to support this claim, specifically the condition of the unit at move out which required time to clean and repair it to have it ready for a new tenant, accordingly; I find that the landlord is entitled to \$912.50.

Filing fee

The landlord is entitled to the recovery of the filing fee for this application in the amount of \$100.00.

Conclusion

The landlord has established a claim for \$13,418.07. I order that the landlord retain the \$912.50 security deposit and pet deposit of \$912.50 along with \$3.76 in accrued interest in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$11,589.31. This order may be filed in the Small Claims 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: February 07, 2023

Residential Tenancy Branch