



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MND, FFL

Introduction

On May 12, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for a monetary order for damage; to keep a security and pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenants did not

The Landlord testified that the Residential Tenancy Branch approved a request for service to the Tenants using email. The Landlord provided copies of emails showing that he served each Tenant with the Notice of Dispute Resolution Proceeding on November 9, 2022 @ 11:30 pm. I find that the Tenants were sufficiently served with notice of the hearing and failed to attend. I find that the Tenants are deemed to have been served notice of the hearing on November 12, 2022, three days after the emails were sent. The hearing proceeded.

At the start of the hearing I introduced myself and the hearing process was explained. The Landlord was provided with an opportunity to ask questions about the hearing process and was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order due to damage to the rental unit?
- Is the Landlords entitled to a monetary order for money owed or damage or loss?
- Can the Landlord keep the security deposit?

Background and Evidence

The Landlord testified that the tenancy began on August 15, 2021, on a month to month basis and was renewed on October 7, 2021 when J.P. moved into the unit. Rent in the amount of \$2,400.00 was due to be paid to the Landlord by the 1st day of each month. The Tenant paid the Landlord a security deposit of \$1,200.00.

The Landlord provided a monetary order worksheet dated May 12, 2022, detailing his monetary claims as follows:

Strata Fine	Noise Disturbance	\$200.00
Labor Costs	To fix and paint	\$1,500.00
Loss of Rent	No Notice to end given	\$2,400.00
Security Deposit	For Damage	\$1,200.00
Pet damage deposit	Water Damage	\$1,200.00
Itotal	\$7,994.30

The Landlord provided three more pages of monetary worksheets breaking down the claims for the costs of cleaning, painting, and repair supplies as well as the purchase of a toilet.

Strata Fine

The Landlord received a violation notice from the building strata regarding noise disturbances by the Tenants. The Landlord provided a copy to the Tenants and asked what happened. The Landlord was assessed a fine of \$200.00 and paid the fine. The Landlord provided a copy of the strata fine.

The Landlord is seeking to recover the \$200.00.

Painting and Repairs

The Landlord is seeking to recover \$1,500.00 for the cost to make repairs to the rental unit. The Landlord testified that the tenants left the rental unit damaged and that the

ceiling was water stained and the walls smelled of smoke. The Landlord testified that he repaired caulking in the bathroom, painted the ceiling and walls, replaced a broken toilet, and fixed a cabinet door. The Landlord testified that he had to purchase paint, rollers, trays, drop cloths, caulking gun, sealant, bathtub stopper, light bulbs, and brushes in order to repair the unit.

The Landlord testified that he purchased a ceiling fan for \$89.99 and bolts for \$3.38 because the fan was not working and maybe the Tenants over-used it.

During the hearing the Landlord withdrew his claim for \$6.36 for aluminum foil tape and a clamp.

The Landlord provided a copy of a move in Condition Inspection Report signed by the Landlord and Tenant on October 7, 2021. The Landlord provided 32 photographs taken of the rental unit at the end of the tenancy, and he provided receipts for the purchase of materials to repair the rental unit.

Loss of Rent: February 2022

The Landlord testified that the Tenants failed to give proper written notice to end the tenancy and left the rental unit damaged. The Landlord was unable to rent the unit out for February 2022 and is seeking to recover a loss of rent in the amount of \$ \$2400.00.

The Landlord testified that he has not received any rent for the unit from any source for the month of February 2022. The Landlord re-rented the unit to a new Tenant effective March 2022.

Security Deposit and Pet Damage Deposit

The Landlord is holding a security deposit of \$1,200.00 and is seeking to keep the deposit in partial satisfaction of his claims. The Landlord never received a forwarding address from the Tenants. The Landlord never received a pet damage deposit from the Tenants.

The Landlord stated that the Tenants requested he keep the security deposit of \$1200.00 towards January 2022 rent, but the Landlord did not agree to do this request.

Interest Charges

The Landlord is seeking to recover a 4% monthly interest charge on his claims.

Analysis

Section 7 of the Act provides if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act provides that 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.

Based on the evidence before me, the testimony of the Landlord and executor, and on a balance of probabilities, I make the following findings:

Strata Fine

I accept the Landlords testimony and evidence that he was assessed and paid a \$200.00 strata fine related to a disturbance by the Tenants at rental property.

I award the Landlord the amount of \$200.00.

Painting and Repairs

The Landlords claim to recover the amount of \$93.37 for a ceiling fan and bolts is dismissed. I find that there is insufficient evidence to prove that the Tenants were negligent on their use of the fan. Building elements often break down with normal wear and tear and a landlord is responsible for the maintenance or replacement of these items.

The Landlords claim for \$6.36 for aluminum foil tape and a clamp was withdrawn and is dismissed.

After considering the Landlord's evidence, I find that the Tenants are responsible for leaving the rental unit damaged. After calculating the Landlord's claims as discussed in the hearing, I award the Landlord the amount of \$1,374.50 for the repair costs.

Loss of Rent February 2022

I accept the Landlords evidence that the Tenants did not end the tenancy with proper notice. I find that the Tenants are responsible to pay the rent owing under the tenancy agreement up to the earliest date they tenancy could legally end. I accept the Landlords evidence that he received no rent from any source for the month of February 2022.

I award the Landlord the amount of \$2,400.00 for a loss of February 2022 rent.

Security Deposit and Pet Damage Deposit

The security deposit of \$1,200.00 has accrued \$2.50 in interest up to the date of this decision. I authorize the Landlord to keep the security deposit of \$1,202.50 in partial satisfaction of his monetary awards. The Landlord's claim to receive an additional \$1,200.00 is dismissed as he cannot claim this amount or be awarded this amount because the Tenants never paid him a pet damage deposit.

Interest

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided. In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.

I find that other than a requirement for a Landlord to pay interest on a security deposit and/or pet damage deposit, the Act does not specifically require a party to pay bank or lender interest to the other party. The Landlord's evidence does not establish the full particulars surrounding a 4% interest charge, or that he actually paid an amount. Nevertheless, I find that the Tenants are not responsible to pay interest charges. The Landlord's claim for 4% interest on his awards is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord is awarded compensation in the amount of \$4,074.50. After setting off the security deposit of \$1,202.50 against the monetary award of \$4,074.50 I grant the Landlord a monetary order in the amount of \$2,872.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord's claims for monetary compensation due to a loss of rent, and for damage to the rental unit was successful.

The Landlord is awarded compensation for damage, a fine, and a loss of rent in the amount of \$4,074.50. After setting off the security deposit of \$1,202.50 against the monetary award of \$4,074.50 I grant the Landlord a monetary order in the amount of \$2,872.00.

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 8, 2023

Residential Tenancy Branch