



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords June 10, 2022 (the “Application”). The Landlords applied as follows:

- To recover unpaid rent
- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Landlords were issued a Substituted Service Decision July 18, 2022, allowing them to serve the hearing package and their evidence on the Tenant by email. The Landlords submitted an email showing they emailed the hearing package and their evidence to the Tenant July 20, 2022. The Landlords confirmed at the hearing that the hearing package and their evidence were emailed to the Tenant July 20, 2022, pursuant to the Substituted Service Decision.

Based on the undisputed testimony of the Landlords and email, I am satisfied the Tenant was served with the hearing package and Landlords’ evidence in accordance with the Substituted Service Decision and therefore the Tenant is deemed to have

received these July 23, 2022. I find the Tenant was served in sufficient time to prepare for, and appear at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to compensation for damage to the rental unit?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Repairs, wall damage	\$1,561.88
2	Cleaning	\$500.00
3	Washer / Dryer replacement	\$1,116.08
4	Unpaid rent	\$20,564.52
5	Filing fee	\$100.00
	TOTAL	\$23,842.48

The Landlords submitted a written tenancy agreement. The tenancy started February 01, 2019. Rent was \$2,450.00 per month due on the first day of each month. The Tenant paid a \$1,225.00 security deposit.

The Landlords testified as follows.

The Tenant moved out of the rental unit April 05, 2022.

The Tenant did not provide their forwarding address to the Landlords in writing.

The Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Tenant did agree to the Landlords keeping the security deposit in the April 04, 2022 email submitted.

The parties did move-in and move-out inspections together; however, did not complete Condition Inspection Reports. The Tenant documented the state of the rental unit at the end of the tenancy in the April 04, 2022 email.

The Tenant caused damage to the rental unit which resulted in the repairs shown in the David Gale Construction Invoice, other than items #10 and 11. The Landlords are only seeking half the cost of repairs. The Tenant acknowledged causing and leaving the damage in the rental unit in the April 04, 2022 email.

The Tenant did not leave the rental unit reasonably clean and the Landlords had to hire cleaners to clean the rental unit which cost \$500.00 for five hours.

The Tenant took the washer and dryer that was originally in the rental unit. The Landlords had to replace the washer and dryer and are seeking this cost.

The Tenant failed to pay \$20,564.52 of rent and did not have authority under the *Residential Tenancy Act* (the “*Act*”) to withhold this rent.

The Landlords are seeking an order that they be allowed to serve any orders issued on the Tenant by email.

The Landlords submitted documentary evidence to support their testimony.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed testimony of the Landlords and based on it, as well as the documentary evidence submitted, find the following.

Security deposit

The Tenant did not provide the Landlords with a forwarding address in writing and therefore the Landlords were permitted to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Sections 26 of the *Act* states:

26 (1) 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.

Section 37 of the *Act* states:

(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...

I accept the Tenant damaged the rental unit in breach of section 37 of the *Act*. I accept the Landlords had to have repairs done to the rental unit given the Tenant's breach. I accept the repairs cost \$3,123.75 and that the Landlords are seeking compensation for \$1,561.88 of this. I find the amount sought reasonable and note that the Tenant did not appear at the hearing to dispute the amount. I award the Landlords the amount sought for item #1.

I accept the Tenant did not leave the rental unit reasonably clean in breach of section 37 of the *Act*. I accept the Landlords had to hire cleaners and this cost \$500.00. I find this amount for cleaning high; however, the Tenant did not appear at the hearing to dispute the amount sought and therefore I award the Landlords the amount sought for item #2.

I accept the Tenant removed the washer and dryer from the rental unit in breach of section 37 of the *Act*. I accept the Landlords had to replace the washer and dryer and that this cost \$1,116.08. I find this amount reasonable and award the Landlords the amount sought for item #3.

I accept the Tenant failed to pay \$20,564.52 in rent and did not have authority under the *Act* to withhold this rent. I award the Landlords the amount sought for item #4.

In relation to the filing fee, given the Landlords have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Repairs, wall damage	\$1,561.88
2	Cleaning	\$500.00
3	Washer / Dryer replacement	\$1,116.08
4	Unpaid rent	\$20,564.52
5	Filing fee	\$100.00
	TOTAL	\$23,842.48

Pursuant to section 72(2) of the *Act*, the Landlords can keep the security deposit. The Landlords are issued a Monetary Order for the remaining \$22,617.48 pursuant to section 67 of the *Act*.

In relation to the Landlords' request to serve any orders issued on the Tenant by email, I find this appropriate given the Landlords were permitted to serve the Tenant by email in the Substituted Service Decision issued July 18, 2022, less than a year ago. Further, the Substituted Service Decision notes that the most recent email from the Tenant to the Landlords was received May 17, 2022, less than a year ago. I find it reasonable to conclude the Tenant would receive the Monetary Order and have actual knowledge of it if it were served on the Tenant by email and therefore, I allow this pursuant to section 71(1) of the *Act*. The Tenant will be deemed to have received the Monetary Order three days after it is emailed to them by the Landlords.

Conclusion

The Landlords can keep the security deposit. The Landlords are issued a Monetary Order for the remaining \$22,617.48. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 28, 2023

Residential Tenancy Branch