



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-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 for \$546.74 in unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, CJ (agent) and the corporate landlord president, DM (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent and landlord 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 26, 2022 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence (Hearing Package) were served on the tenant by email on May 26, 2022 and that a Form 51 was completed by the tenant approving email as a method of service, which was submitted in evidence for my consideration. The tenant's email address has also been included on the cover page of this decision for ease of reference.

Section 44 of the *Residential Tenancy Regulation* sets out that documents served by email are deemed served 3 days after the documents are emailed. Therefore, I find the tenant was deemed served as of May 29, 2022. Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

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.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matter

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 also be sent to the tenant at the email address provided in the application for the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- 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 fixed-term tenancy began on September 2, 2020 and was scheduled to convert to a month-to-month tenancy as of August 31, 2021. The tenant's monthly rent was \$2,200 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,100 at the start of the tenancy, which the landlord continues to hold. Any interest for that security deposit will be calculated later in this decision.

The landlord is seeking \$446.74 for the following, before the filing fee, defined as:

Upon Move Out Inspection dead Moths were found through out the suite and Tenants were advised to wash their clothes to prevent transporting to her new home. Tenant painted walls & tagged the ceiling. Ceiling paint purchased to cover the tagged areas.

[reproduced as written]

The landlord submitted a copy of the Condition Inspection Report (CIR) in evidence. The incoming CIR was dated September 2, 2020 and the outgoing CIR was dated April 30, 2022.

The evidence presented was that the rental unit contained wool carpet and that the tenant had moths in the rental unit, which required cleaning. Photos of moths were provided, which showed their presence on the wool carpet. An invoice and cheque dated 07/08/2022 was also submitted in evidence in the amount of \$414.75 made out to a pest control company. The address on the invoice matches the rental unit address.

In addition, the agent and landlord presented a receipt for \$31.00 for paint, which the landlord explained via the photo evidence that showed the tenant painted the rental unit walls and accidentally painted the ceiling too in places by not being careful when painting and required repainting by the landlord to fix the ceiling damage.

The landlord is also seeking the filing fee.

Analysis

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

As the tenant was served with the Hearing Package and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the amount of **\$546.74**, 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 agent and landlord and that the application was unopposed by the tenant.

I find the tenant breached section 37(2)(a) of the Act, which applies and states:

Leaving the rental unit at the end of a tenancy

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 find the tenant failed to keep the wool carpet in a reasonably clean condition thereby attracting moths and as such, required pest control treatment. In addition, I find the tenant overpainted onto the ceiling, which damaged the ceiling paint and required re-painting by the landlord.

The tenant's security deposit of \$1,100 has accrued interest under the Act in the amount of **\$2.70**. Therefore, I find the landlord is holding a total security deposit including interest of **\$1,102.70**. Therefore, I authorize the landlord to retain **\$546.74** of the tenant's security deposit of \$1,102.70, which includes interest in full satisfaction of the landlord's monetary claim.

I grant the tenant a monetary order pursuant to section 67 of the Act, for the security deposit balance owing by the landlord to the tenant in the amount of **\$555.96**.

Conclusion

The landlord's application is fully successful. The landlord has been authorized to retain \$546.74 of the tenant's security deposit of \$1,102.70, which includes interest, in full satisfaction of the landlord's monetary claim. The landlord must return the balance to the tenant and as such, the tenant has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant in the amount of \$555.96.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord, if necessary. The landlord can be held liable for all costs related to enforcing the monetary order, including court costs.

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: February 15, 2023

Residential Tenancy Branch