



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SKYLINE APARTMENTS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: MND-S, FF
For the tenant: MNSD

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The tenant applied for:

- a return of their security deposit.

The landlord's agent (landlord) attended the hearing; the tenant did not attend.

The landlord submitted documentary evidence and testimony showing that the tenant was served with their application for dispute resolution, evidence, and notice of hearing (NODRP) by registered mail September 23, 2022.

Based upon the landlord's oral and written submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

The Rules provides the following:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the absence of any evidence or submissions from the tenant at the hearing, I order their application dismissed, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary compensation referred to above and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence showed the tenancy started on October 5, 2018 and ended sometime after April 27, 2022, after the landlord received an order of possession of the rental unit. The monthly rent at the start of the tenancy was \$1000. The tenant paid a security deposit of \$500, according to the tenancy agreement and the landlord continues to hold

the security deposit, having made this claim against it. Filed in evidence was the written tenancy agreement.

The landlord submitted that they finally gained access to the rental unit by May 19, 2022.

The landlord's monetary claim based on their monetary order worksheet is the following, totalling \$9,055.13:

1. Garbage removal, \$480
2. Garbage removal, \$420
3. Damaged door replacement, \$1,123.36
4. Suite garbage removal, \$633.15
5. Drywall, repairs, paint, \$2,000
6. Repairs, paint, install door, \$1,353.62
7. Lost rent due to repairs, \$3,045

In their application, the landlord wrote the following:

Skyline Apartments was granted an Order of Possession on April 27, 2022. (tenant name) left the suite damaged, dirty, and trashed with belongings. (tenant name) never checked out with the office upon vacating the suite, he did not return his keys, he did not leave any forwarding address as he claims. On August 27, 2022, I, (agent name), was served with a direct request for returned damage deposit, which lists (tenant name)'s new address which we did not receive until August 27, 2022.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord's additional relevant evidence included, but was not limited to, photographs showing the state of the rental unit after the tenant vacated, a condition inspection report (Report), notice of rent increase which increased the monthly rent to \$1,015, tenant accounting sheet, stating that the landlord lost rent for May, June and July 2022, and receipts for costs.

In a written statement, the landlord stated that the rental unit was very dirty and damaged, filled with the tenant's personal property, and with the walls and doors broken.

The landlord provided the testimony at the hearing:

The floor of the rental unit appeared that the tenant used the floor as an ashtray, the tenant spray painted the walls in the rental unit, there were small holes all over the walls in the rental unit, portions of the drywall had to be removed and replaced, due to the damage, all of the drywall in the bathroom had to be replaced, and there were holes in the door, requiring that the door be replaced.

The rental unit was not livable due to the damage by the tenant, and the repairs were into July, due to the amount of damage and the time for contractors to work and orders be filled. For this reason, the landlord claims 3 months of lost rent revenue.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord here, has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 (2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

As such, a tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

As the tenant failed to attend the hearing or file evidence, I find the landlord's application is undisputed.

I find the landlord submitted sufficient documentary and photographic evidence that the tenant failed to properly and reasonably clean the rental unit, or at all. I find the photos clearly show the rental unit was unsanitary, unhygienic, filthy and with extreme clutter in every room. I find the landlord's evidence overwhelmingly proved the tenant did not maintain the rental unit according to health, cleanliness, and sanitary standards.

Considering the amount of garbage and belongings left by the tenant, I find the landlord's claim and the associated costs for garbage removal to be reasonable.

Considering the amount of damage shown in the photographs, I find the landlord's claim for repairs, replacement of the drywall and door, painting, and door replacement and installation to be reasonable and the associated costs to be reasonable.

Considering the condition of the rental unit at the end of the tenancy, the garbage and personal property left by the tenant, and the subsequent damage and repairs, I accept the landlord's evidence that the remediation took place from May to July 2022. I accept the landlord's claim for loss of rent revenue, as I find the rental unit was not habitable at the end of the tenancy and required extensive repairs. I find the cost claimed by the landlord to be reasonable.

For the above reasons, I find the landlord's claim was reasonable and verified by their evidence.

I find the landlord submitted sufficient evidence to support their entire monetary claim as described on page 3 of this Decision.

As a result, I therefore find the landlord has established a monetary claim of **\$9,055.13**, as noted above.

Due to their successful application, I grant the landlord recovery of their filing fee of **\$100**.

For these reasons, I find the landlord is entitled to a monetary award of **\$9,155.13**.

As of this date, the tenant's security deposit has accumulated interest of \$4.11. I authorize the landlord to keep the tenant's security deposit and deduct the tenant's security deposit and interest of **\$504.11**. and I issue the landlord a monetary order (Order) for the balance due of **\$8,651.02**.

The Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court, if necessary.

Conclusion

The landlord's application has been fully successful.

The tenant's application was dismissed, due to their failure to attend the hearing and present evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 03, 2023

Residential Tenancy Branch