



Dispute Resolution Services

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Residential Tenancy Branch (RTB)
Ministry of Housing

Decision

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was called to consider the landlord's application dated September 16, 2022, for the following orders:

- An order for monetary compensation related to unpaid rent or utilities
- An order for monetary compensation for loss
- An order for monetary compensation for other monies owed
- An order to recover the costs of the filing fee
- An order to retain the value of the security deposit and pet deposit against monies said to be owed

The landlord was previously issued an Order of Possession and a Monetary Order for rent on June 30, 2022. The associated Writ of Possession was enforced on August 2022 and the landlord conducted their move-out condition inspection on September 02, 2022.

Preliminary Matters

The landlord's request to retain the tenant's security and pet deposits are not considered in this decision because instruction for the same was previously provided by the RTB on June 30, 2022.

The tenant repeatedly objected to participating in the hearing. They requested it be adjourned and that I recuse myself from the hearing due to perceived bias. I explained the process for exploring the adjournment request in accordance with Residential Tenancy Policy Guideline #45. The tenant actively participated for the remainder of the hearing after requesting that the following objections be recorded:

- Tenant stated they did not receive supporting evidence for landlord's claim – they acknowledged the email address used for service as a personal email address, but testified email attachments could not be opened.
- Tenant stated they could not participate because RTB jurisdiction "does not extend" to their current location in Europe.
- Tenant stated being in Europe meant the hearing was occurring while they should be in bed.
- Tenant stated landlord dispute is before the courts but did not describe the matter or the court.

The landlord established on the balance of probabilities that the tenant was provided with all information necessary to participate in the hearing. I accept that the landlord served to the email address approved for substituted service, and that proof of this service was provided. The landlord testified that the tenant frequently requests adjournments.

I considered the test for adjournment outlined in Residential Tenancy Policy Guideline 45 and denied the tenant's request for three main reasons:

1. The tenant was provided with nearly 8 months (October 2022 through to June 2023) to request and or pursue such an adjournment
2. The tenant appeared to be intentionally requesting an adjournment – no verifiable supporting documentation was provided in support of their objections
3. I found it unlikely that an adjournment would bring the parties closer to resolution

Issues to be Decided

- 1) Is the landlord entitled to a monetary order for unpaid rent and/or utilities?
- 2) Is the landlord entitled to a monetary order for loss?
- 3) Is the landlord entitled to a monetary order for other compensation owed?
- 4) Is the landlord entitled to the filing fee?

Issue 1: Monetary Compensation Related to Unpaid Rent or Utilities

The landlord provided a rental ledger to support their claim for payment of rent and utilities. Their specific claim is for the months of July through September 2022 because:

- Rent was previously awarded up to June 30, 2022
- New tenants for the unit were not in place until October 2022
- The tenant secured a “stay of proceedings” that prevented the landlords from enforcing the writ of possession until August 30, 2022

The landlord explained that monthly rent included charges for parking, amenities, utilities and late fees in accordance with the terms of the Tenancy Agreement. The base monthly rent was identified as \$1,624.00.

July 2022 = \$1,766.00

August 2022 = \$1,766.00

September 2022 = \$1,766.00

The tenant acknowledged all components of the landlord’s charges as per the Tenancy Agreement. The tenant testified there was a complicated history but did not dispute that monies were unpaid for the period claimed.

Issue 1: Analysis

I accept that parties agree rent and associated charges including utilities, were not paid between July and September 2022. I find that the landlord is entitled to payment of the full amount claimed for July 2022 (\$1,766.00) and August 2022 (\$1,766.00) and base rent (\$1,624.00) for September 2022.

I make this partial award for September 2022 because the landlord regained possession of the unit on August 30, 2022. This meant that associated services and facilities were not available to the tenant during the month of September 2022. I find that rent was nevertheless owed by the tenant for this month, because the stay of eviction proceedings prevented the landlord from securing new tenants for September 2022.

Issue 1: Finding

I award the landlord \$5,156.00 for unpaid rent and utilities (\$1,766.00 + \$1,766.00 + \$1,624.00).

Issue 2: Monetary Compensation for Loss

The landlord requested \$695.00 in compensation for losses incurred in the process of restoring the rental unit. They provided a supporting invoice and explained that the tenant was charged for:

- Failure to return associated keys and passes – replacement costs charged in accordance with the tenancy agreement (\$270.00)
- Minor unit repairs (\$125.00)
- Six hours of cleaning (\$300.00)

The landlord provided proof of condition inspection reports and various pictures of the rental unit, taken September 2, 2022, in support of their claim. The landlord testified the tenant was provided with two opportunities to attend the move-out condition inspection on September 2, 2022.

The tenant testified they left for Europe on or around July 18, 2022, due to a death in the family. The tenant acknowledged retaining the items identified by the landlord and testified the landlord never asked for them back. The tenant acknowledged that the unit was “*lived in*” when the bailiff enforced the writ of possession on August 30, 2022. The tenant disputed the landlord’s claim they contacted the tenant regarding the move-out inspection. The tenant also denied they were given an opportunity to attend and or repair any damages.

Issue 2: Analysis

I find that the landlord is entitled to the requested compensation because:

1. The tenant agreed they did not return all keys and passes related to the rental unit and the landlord provided relevant supporting documentary evidence including the original written Tenancy Agreement/Addenda as well as invoice for replacement items.
2. The landlord provided assorted photos confirming the need for cleaning along with an invoice for cleaning in the amount charged. In accordance with Residential Tenancy Policy Guideline #1, the unit is expected to be “*reasonably clean*” at end of tenancy and the tenant in this dispute, agreed the rental unit was “*lived-in*” on August 30, 2022.
3. The landlord provided a verifiable invoice for repair charges as well as a series of photos confirming that completed work was required for \$125.00 as noted above.

4. The validity of this damage claim is not impacted by tenant participation in the move-out condition inspection. I say this because the security and pet deposits were previously awarded on June 30, 2022

Issue 2: Finding

I award the landlord \$695.00 for losses claimed.

Issue 3: Monetary Compensation for Other Monies Owed

The landlord provided proof of a local bailiff invoice in the amount of \$2,148.92. Bailiff services were required to enforce a writ of possession on August 30, 2022, and to also remove the tenant's possessions.

The tenant stated that they were out of the country when the bailiff was called. The tenant did not dispute that the landlord had the tenant's possessions removed from the rental unit.

Issue 3: Analysis

I accept that the landlord used a bailiff to enforce the writ of possession on August 30, 2022, and remove the tenant's possessions. The tenant did not dispute that the bailiff attended the rental unit and removed his possessions.

Where the landlord requested in their application, that the tenant also be charged a move-out fee in accordance with the Tenancy Agreement, I was not provided with enough evidence to consider this claim for the additional \$150.00 charge.

Issue 3: Finding

I award the landlord \$2,148.92 for other monies owed.

Issue 4: Recovery of Filing Fee

The landlord applied to have the tenant pay the \$100.00 filing fee. I order the tenant to pay this \$100.00 filing fee in accordance with section 72 of the Act since the landlord was successful in their claim.

Conclusion

The landlord is granted a monetary order in the amount of \$8,099.92:

Unpaid rent and utilities	\$5,156.00
Damage and loss	\$695.00
Other losses	\$2,148.92
Filing Fee	\$100.00
	\$8,099.92

The landlord must serve the tenant(s) with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *ACT*.

Dated: June 28, 2023

Residential Tenancy Branch