



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on October 9, 2022 seeking compensation for rent amounts owing, damage in the rental unit, other money owing, and the Application filing fee.

The Landlord attended the conference call hearing; the Tenant did not attend. I gave the Landlord the opportunity to ask questions on the hearing process and explained that process fully to the Landlord at the outset.

Preliminary Matter – Landlord’s service of Dispute Resolution Proceeding and evidence

The Landlord presented evidence that they served the Notice of Dispute Resolution Proceeding and their prepared evidence to the Tenant via registered mail. This was on October 21 after they received the documentation from the Residential Tenancy Branch on October 20. The Landlord provided an image of the post office receipt, and registered mail label.

On the Landlord’s evidence and additional details, they provided in the hearing about obtaining the Tenant’s forwarding address, I find they served the Tenant as required by s. 59(3) of the *Act*. This was in a manner specified by s. 89(1)(c) of the *Act*. I give the Landlord’s Application details and evidence full consideration in this hearing because they disclosed it correctly to the Tenant.

The Tenant did not attend the hearing as scheduled; however, I find the Landlord notified them of the hearing as required. I proceeded with the hearing because the Landlord was in attendance.

Issues to be Decided

Is the Landlord entitled to compensation for any rent amounts owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damage in the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for other monetary amounts owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had with the Tenant. This was jointly signed by the parties on February 5, 2022 for the tenancy that started on February 15, 2022. The rent amount was \$1,350, payable on the first day of each month. The agreement shows the Tenant paid a security deposit of \$675.

The Landlord sought to end the tenancy for infractions by the Tenant, as a risk to the property, and served a One-Month Notice to End Tenancy for Cause to the Tenant on July 25, 2022, for the end-of-tenancy date of August 31, 2022. After this, the Tenant did not pay rent on August 1, and the Landlord then served a 10-Day Notice to End Tenancy for Unpaid Rent. According to the Landlord, the Tenant stated directly: "I will not be paying". As shown in the Landlord's final rental unit ledger, The Tenant paid rent for June (on June 1), and July (on June 29). The record shows no further rent payments from the Tenant. The Landlord claims for the full amount of August rent, at \$1,350.

The Tenant returned the key for the rental unit to the Landlord on August 23, 2022. They left items of personal property within the rental unit as the Landlord showed in a provided photos and text messages. By August 8, the Tenant notified the Landlord they would be out "Friday or Saturday", and then moved out items day-by-day throughout the month of August. The Landlord queried on remaining items on August 27, and then through to the end of the month the Tenant did not retrieve these items.

The Landlord described how the Tenant's items remained in the rental unit property through September 12, after their move-out. The spaces rented out by the Landlord in the rental unit home include a single-room unit at \$1,050, and the Tenant's former rental unit, which was larger. The Landlord switched the Tenant's remaining items to the smaller room, *i.e.*, the \$1,050-per-month rental space. It was not until mid-September, according to the Landlord's testimony, that the Tenant came to retrieve their own items from the rental unit property.

The Landlord claims rent in the amount of \$1,050 for the space occupied by the Tenant's belongings for the dates in September. According to the Landlord: "how could I promise someone a room for the 1st of September . . . ", meaning they were not able to rent out the extra space for the month of September because of the Tenant's personal property. The Landlord provided two photos that show the amount of possession left behind by the Tenant. The Landlord was not able to secure a solid date from the Tenant on their personal items' removal. Accordingly, the Landlord had a new tenant in place in the rental unit for October 1st.

For this piece of their claim, the Landlord claims \$1,050, as "lost rent" for that additional rental unit space.

The Landlord's claim for damage to the rental unit property stems from the Tenant's driving. In July, the Tenant, who operated a larger vehicle for their work (a food truck), backed into the rental unit house, thereby damaging the rain gutter/eavestrough. The Landlord notified the Tenant about this via text messages with pictures, and the Tenant stated "I'll replace it 100%." The Tenant also stated "I thought I hit the wheelbarrow." and "I can get it replaced or fix it myself." The Landlord also notified the Tenant that the piece on the front of the house, around 60ft long, was "only a year old."

For the rain gutters/eavestrough, the Landlord obtained an estimate for the work. This set out a five-step process, for the amount of \$1,580. The Landlord notified the Tenant about this, using the company that originally installed the rain gutter/eavestrough.

The Landlord also provided images of their wheelbarrow that was damaged by the Tenant's driving. The Landlord notified the Tenant about this on July 25. In those messages, the Tenant acknowledged this damage as well. The Landlord provided an image for a replacement wheelbarrow, a basic model thereof, showing the cost of \$228.

Analysis

I find as fact that the monthly rent amount to be paid by the Tenant was \$1,350, as per the agreement the Landlord provided in the evidence. I find the Tenant paid a security deposit of \$675, and no pet damage deposit, as confirmed by the Landlord in the hearing.

By s. 26 of the *Act*, a tenant must pay rent when it is due under the tenancy agreement, unless a tenant has a right to deduct some portion thereof.

I find the Landlord credible on their account of the rent amounts paid by the Tenant over the course of this tenancy. There is a shortfall of \$1,350, for the month of August 2022. I find as fact the Tenant had no authority to withhold rent for that month. I also find as fact they did not pay the rent to the Landlord as required; therefore, I grant the full amount of August rent, at \$1,350 to the Landlord.

A per s. 37 of the *Act*, a tenant, when they vacate a rental unit, must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

On each of the three points for other compensation claimed by the Landlord, I find as follows:

1. extra rent for occupied space in September – I find as fact the Tenant did not leave the rental unit reasonably clean, with a sizable amount of personal items left behind. This required storage by the Landlord, and this occupied space that they would otherwise rent out to a new tenant. I find the Landlord minimized this expense to them by moving the Tenant's items into an unoccupied space in the rental unit property that they would normally receive rental income from. That amount is \$1,050. I find it reasonable that the Landlord would not be able to rent out that unit again in the middle of the month when the Tenant finally removed their personal items. The Landlord was credible on this account; therefore, I grant the amount of \$1,050 to them as compensation.
2. damaged rain gutters/ eavestrough - \$1,580 – I am satisfied of the value of this item, from the estimate the Landlord obtained from the company that originally installed them. I find as fact this damage was from the Tenant operating their vehicle on the rental unit property. The Tenant's own messages to the Landlord confirm this. I grant this amount to the Landlord as compensation. I note the Landlord did not complete this work; therefore, I grant no reimbursement for GST.
3. replacement wheelbarrow \$228 – I find this constitutes damage to the personal property of the Landlord, and could have been avoided through the Tenant's own reasonable care. I grant this amount to the Landlord in full.

In total, I grant the Landlord the amount of \$4,208 as compensation for the above noted items.

The Landlord was successful in this Application; therefore, I grant the full amount of the Application filing fee to them. This amount is \$100.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here established a claim of \$4,308.00. After setting off the security deposit amount of \$675, there is a balance of \$3,633.00. I am authorizing the Landlord to keep all of the security deposit, and order the Tenant to pay the remaining amount of \$3,633.00

Conclusion

I order the Tenant to pay to the Landlord the amount of \$3,633.00. I grant the Landlord a monetary order for this amount, and they must serve it to the Tenant as soon as possible. The Landlord may file this monetary order at the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 10, 2023

Residential Tenancy Branch