

DECISION

Dispute codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with two applications filed by the Landlord under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or residential property under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing was held over two dates and an Interim Decision was issued on December 21, 2023. The Interim Decision should be read in conjunction with this decision.

The Landlord's agent S.J. appeared at both hearings. The Landlord A.M. appeared at the reconvened hearing briefly and authorized S.J. to represent him. The Tenant only appeared for the first hearing session.

Preliminary and Procedural Matters

As seen in the Interim Decision I had ordered the Landlord to re-serve the Tenant with the proceeding package and evidence for the Landlord's file number ending in 067. The Landlord uploaded an image of the email sent to the Tenant on December 28, 2023. I noted that the email has 7 attachments, all of which appear to be evidence, but not the proceeding documents. S.J. confirmed only those 7 attachments of evidence were sent via email on December 28, 2023.

Since the Landlord did not serve the Notice of Dispute Resolution Proceeding for file 067 to the Tenant in the email of December 28, 2023, I find the Landlord did not comply with my order. The Notice of Dispute Resolution Proceeding includes the Landlord's Application for Dispute Resolution which sets out the claim. In the absence of the Application for Dispute Resolution the respondent is not put on notice as to the claims against them and evidence alone is not a substitute for an Application for Dispute

Resolution. Therefore, I was unsatisfied that the proceeding documents for the application with the file number ending in 067 were served and I dismissed that application without leave.

I dismissed the Landlord's application without leave because the Landlord made the same claims under the other application before me, with the file number ending in 035. As such, it is not prejudicial to dismiss file number ending in 067 without leave.

I also noted the Landlord's last name appeared to have a typographical error on the application ending in file number 035. The Landlord's name was amended at the request of S.J. to correctly reflect the Landlord's last name.

Issues to be determined

- Has the Landlord established an entitlement to a Monetary Order for unpaid rent and utilities in the amount claimed?
- Has the Landlord established an entitlement to a Monetary Order for damage, junk removal and cleaning of the rental unit in the amount claimed?
- Is the Landlord authorized to retain the tenant's security deposit?
- Is the Landlord authorized to recover the filing fee paid for the Landlord's application.

Background and Evidence

The one year fixed term tenancy started on October 1, 2022. The Landlord collected a security deposit of \$1,500.00. The monthly rent was set at \$3,000.00 due on the first day of every month.

The Tenant failed to pay rent for May 2023 and a dispute resolution proceeding was held on June 20, 2023 (file number referenced on the cover page of this decision). The Arbitrator presiding over that proceeding provided the Landlord with an Order of Possession and a Monetary Order for the unpaid rent for May 2023. The Arbitrator did not dispose of the security deposit. S.J. confirmed the Landlord still holds the security deposit.

While waiting for the hearing of June 20, 2023, the Tenant did not pay any rent for June 2023.

The Tenant vacated the property on or about June 20 or 22, 2023. After the Tenant vacated the Landlord removed the perishable food items left behind in the rental unit.

The Landlord tried contacting the Tenant to offer the Tenant the opportunity to participate in the move out inspection but the Tenant she did not participate.

The Landlord performed the move-out inspection along with a witness on July 31, 2023 and sent a copy to the tenant at the Tenant's forwarding address.

The Landlord claimed the following compensation from the Tenant.

Unpaid rent and/or utilities - \$8000.00

The Landlord did not prepare a Monetary Order Worksheet but the details of dispute provided the following breakdown under this section of the Landlord's application:

“partial Unpaid rent for May (\$1100) as per order of possession, unpaid rent for June (\$3000), unpaid rent for Jul (\$3000) which unit has been vacant to repair damages and perform move out inspection, unpaid utilities since Feb 2023”

I drew S.J.'s attention to the discrepancy of the amount claimed on the application (\$8,000.00) to the breakdown provided in the details of dispute. The Landlord's agent acknowledged it appears she may have made a mathematical error in completing the application.

Since the Landlord already has a Monetary Order for the unpaid rent for May 2023, which remains enforceable, I did not consider the same claim a second time. Rather, it is upon the Landlord to enforce the Monetary Order that was already provided for May 2023 unpaid rent on June 20, 2023.

S.J. testified the Tenant never paid any rent for June 2023 but the Tenant remained in possession of the rental unit until June 20 or 22, 2023.

As for the claim for the month of July 2023, S.J. testified that the unit was not re-rented in July 2023 as they waited for the Tenant to come participate in the move-out inspection and because the rental unit was not re-rentable until it was cleaned and repaired.

The Landlord testified that the unit was not re-rented until September 1, 2023; however, the Landlord did not include a claim for unpaid and/or loss of rent for August 2023 in this application and I did not consider awarding an amount not claimed.

The Landlord had uploaded several utility bills but the amount claimed was not set out in the application. Therefore, I did not consider awarding an amount not claimed.

Damage and cleaning -- \$6,873.28

The Landlord set out the details of this claim on the application to be:

“Tenant has done extensive damages to appliances and fixtures in the house. Other non wear and tear damages. The house was full of garbage and broken furniture which we had to take care of. No professional move out cleaning was done as per contract.”

The Landlord did not provide a Monetary Order worksheet or detailed calculation to demonstrate how the amount of \$6,873.28 was determined. I asked the Landlord's agent S.J. how this amount was derived. The Landlord's agent responded that there are only four invoices in the evidence that the Landlord is seeking to recover from the Tenant for carpet cleaning, cleaning, junk removal and damage. In adding the four invoices together, the sum equals \$4,039.38. The four invoices do correlate to the alleged breaches that were identified in the details of dispute and adding four invoices together is not overly onerous. Accordingly, I permitted the Landlord to present its claims for the lesser amount of the invoices despite the lack of a detailed calculation.

By way of the details of dispute and the four invoices included in the evidence, the Landlord seeks compensation the following amounts for carpet cleaning, cleaning, junk removal and damage:

1) Carpet cleaning - \$697.13

The Landlord submitted the carpeting was left soiled at the end of the tenancy and the Landlord had to have the carpets cleaned at a cost of \$697.13.

2) Cleaning -- \$448.87

The Landlord submitted that the house was left with abandoned possessions, including perishable food, and the house was left dirty. The Landlord had to have the rental unit cleaned and it cost \$448.87.

3) Garbage removal -- \$696.15

The Landlord submitted that the Tenant left a significant amount of abandoned possessions and garbage behind, inside and outside of the rental unit. The Landlord had the garbage removed at a cost of \$696.15.

4) Damage -- \$2,197.23

The Landlord submitted that Tenant left the rental unit damaged and a contractor was paid \$2,197.23 to rectify the damages, as seen in the invoice provided. The damage caused by the Tenant included: blinds that were broken or had missing slats, window frames that were chipped and stained, numerous burnt out light bulbs, screen doors that were ripped or missing, the fridge door was misaligned and had a broken shelf, broken and missing trim pieces, damaged kitchen cabinets, a bend in the interior railing, a stained, burnt and dirty floor in the covered porch, and an exterior wall covered in chalk.

In addition to the invoices, the landlord provided numerous photographs and bank statements to demonstrate the invoices were paid.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

I provide the following findings and reasons with respect to the Landlord's claims.

Unpaid rent

The Landlord included a claim for unpaid rent for May 2023; however, the Landlord already has a Monetary Order for the May 2023 unpaid rent by way of a previous proceeding and that Monetary Order remains enforceable. Therefore, the Landlord does not require a Monetary Order for unpaid rent for May 2023 by way of the application before me.

Based on the decision issued under the previous proceeding, an Arbitrator determined the tenancy came to an end on May 21, 2023 due to unpaid rent and an undisputed 10 Day Notice to End Tenancy for Unpaid Rent. During the hearing for the applications before me, the Landlord and the Tenant both provided consistent testimony that the Tenant continued to hold possession of the rental unit until June 20 or 22, 2023.

I accept the unopposed evidence before me that the Tenant failed to vacate the rental unit by the effective date of the 10 Day Notice, of May 21, 2023, which is contrary to the requirements of section 46 of the Act and the Tenant did not pay any monies to the Landlord for her continued occupation of the rental unit during the month of June 2023. Therefore, I award the Landlord \$3,000.00 as requested for loss of rent for the month of June 2023.

As for unpaid rent for July 2023, the Tenant did not occupy the rental unit during that month; however, the Landlord submitted unopposed evidence that the Tenant's actions caused the Landlord to suffer a loss for the month, including leaving the rental unit very unclean, with a significant amount of garbage and abandoned possession left behind,

and damaged. For reasons provided in the next section, I accept that to be accurate and I grant the Landlord's request to recover loss of rent for the month of July 2023 from the Tenant.

Damage, cleaning and junk removal

Section 32 of the Act provides that a Tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the Tenant. Section 37 of the Act requires the Tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a Landlord may pursue a Tenant for damage caused by the Tenant or a person permitted on the property by the Tenant due to their actions or neglect, but a Landlord may not pursue a Tenant for reasonable wear and tear or pre-existing damage.

Section 37 of the Act also requires that a Tenant leave a rental unit "reasonably clean" at the end of the tenancy.

Section 37 of the Act also requires that a Tenant leave a rental unit vacant at the end of the tenancy. This includes removal of the Tenant's garbage and unwanted possessions.

The Landlord provided numerous photographs to demonstrate the Landlord's unopposed position that the Tenant left the rental unit dirty, damaged, and a significant amount of garbage and possessions were left behind. The Landlord provided invoices and a bank statement to demonstrate the costs paid to clean, remove garbage and repair damage. Overall, I find I am satisfied the Landlord is entitled to recover the amounts sought for these items from the Tenant, especially considering there was no evidence provided by the Tenant to refute any of these claims. Therefore, I award the Landlord recovery of \$4,039.38 for damage, cleaning and garbage removal.

Filing fee

Since the Landlord's claim had merit, I award the Landlord recovery of the \$100.00 filing fee paid for this application.

Security deposit

The Landlord is still holding the Tenant's \$1,500.00 security deposit and I authorize the Landlord to retain the security deposit, plus accrued interest, in partial satisfaction of the amounts awarded to the Landlord with this decision.

I calculate the accrued interest on the security deposit to be \$36.99.

Monetary Order

In keeping with all of the above findings and reasons, I provide the Landlord with a Monetary Order to serve and enforce upon the Tenant as calculate below:

Rent: June 2023 and July 2023	\$ 6,00000
Damage and cleaning	4,039.38
Filing fee	<u>100.00</u>
Total awarded	\$10,139.38
Less: security deposit and interest	<u>(1,536.99)</u>
Monetary Order for Landlord	\$ 8,602.39

Conclusion

The Landlord is authorized to retain the Tenant's security deposit and accrued interest and the Landlord is provided a Monetary Order the balance outstanding of \$8,602.39 to serve and enforce upon the Tenant.

This interim 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: March 8, 2024

Residential Tenancy Branch