



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCL-S MNRL-S FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain the security deposit pursuant to section 72;
- Reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. No issues of service were raised. I find the tenant was served under section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below

The parties testified the month-to-month tenancy began on August 6, 2015 and ended on July 11, 2018. The rent was \$1,100.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted as evidence.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$575.00 and a pet deposit in the amount of \$200.00, being \$775.00 in total and together referred to as the “deposits”. The deposits are held by the landlord. The tenant has not provided written authorization to the landlord to retain the deposits.

On May 12, 2018, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) as the tenant owed a balance of \$300.00 rent for June 2018.

The tenant testified that shortly after receiving the Ten-Day Notice, he informed the landlord he would be moving out at the end of June 2018 as he could no longer afford the rent. The parties acknowledge the tenant paid the balance owing of \$300.00 within a week or two of being served with the Ten-Day Notice as well as rent for June 2018. The landlord testified he did not know the tenant was planning to move out at the end of June 2018. The landlord did not bring an application for an order of possession.

In mid-June 2018, the landlord asked the tenant by text if he was planning to move out at the end of June. The tenant stated this text indicates the landlord knew he was moving out at the end of June 2018. The landlord denied this interpretation and stated the text is properly interpreted that the landlord was not aware of the tenant’s plans to vacate. A copy of the text was submitted.

At the end of June 2018, the tenant requested an additional week to move out and the parties acknowledge the tenant paid the landlord \$250.00 rent for overholding in July. The tenant vacated July 11, 2018. The landlord submitted no receipts for rent or a rental ledger.

The landlord claimed a monetary award for rent as he did not receive 30-days’ notice as required under the *Act*. His claim is for \$850.00 calculated as follows:

ITEM	AMOUNT
Rent for July 2018	\$1,100.00
LESS: Rent paid for July 2018	(\$250.00)
TOTAL OUTSTANDING RENT	\$850.00

The landlord also claimed compensation for the cost of repairs for damages to the unit. The landlord submitted photographs as evidence. He testified they were taken after the tenant vacated the unit and are illustrative of damage the tenant caused. The pictures show accumulated bags of garbage, two sets of bifold doors with marks on them, marks on walls and the front door, and glue residue on the living room wall. The marks all appear to be children's marker drawings. The landlord submitted an estimate from a contractor dated July 15, 2018 for \$4,500 - \$5,500 for labour plus \$650.00 to \$900.00 for materials. The estimate does not contain a breakdown of repairs related to the tenancy but instead included repairing all walls in the unit, painting the entire unit, replacing blinds, repairing casings, replacing a missing patio door, weather-stripping, and various other items. The landlord stated the work had taken place on the unit, but he did not provide a copy of the receipt as evidence. He said the unit had been painted some years before the tenant moved in.

The tenant denied he is responsible for the repairs the landlord did to the unit. He stated the unit was in the same or better condition when he vacated as when the tenancy started. He stated he moved in to a unit in need of painting and repairs. The tenant stated there was a condition inspection done when the tenant moved in which supports his claim. The landlord stated he overlooked filing the condition inspection report on moving in. The parties agreed that no condition inspection had taken place on moving out.

The landlord acknowledged receipt of the tenant's forwarding address prior to the date he moved out. The landlord brought an application for dispute resolution on July 24, 2018 within the 15-day period of the tenant leaving the unit.

The landlord claimed a monetary award as follows:

ITEM	AMOUNT
Outstanding rent	\$850.00
Compensation for damages (estimate)	\$1,000.00
Filing fee	\$100.00
(Less security deposit)	(\$775.00)
TOTAL	\$1,175.00

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The parties disagree on whether the tenant provided the landlord with notice he was leaving the unit. The text referred to by the parties is not conclusive. As the landlord started proceedings to end the tenancy through the issuance of a Ten-Day Notice in May 2018, I find the tenant's testimony to be a reasonable version of events; that is, the tenant told the landlord in May 2018 he could no longer afford the rent and was moving out at the end of June 2018. The landlord has not submitted any receipt for the rent he received as partial payment for July 2018 which could indicate a balance owing for the month. As such, based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support his claim that the tenant failed to provide one month's notice to end the tenancy effective June 30, 2018. Therefore, I decline to award the landlord's compensation for outstanding rent.

Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the landlord did not submit the condition inspection report prepared on moving in and no inspection on moving out took place. The tenant claims the damage described by the landlord pre-dates his tenancy. When there is only disputed testimony, documentary evidence can add weight to shift the balance of probabilities in favour of the claimant seeking compensation. In this case, I find that the landlord failed to provide sufficient evidence to prove his claim for compensation for \$1,000.00 for compensation for damage to the unit. He submitted no receipts, but only an estimate for labour and materials which did not relate exclusively to the tenancy. There was no evidence presented by the landlord to establish the condition of the unit when the tenant moved in or and the changes or damages for which the

tenant may be responsible when he moved out. Further to this, the tenant provided testimony that he left the unit in improved condition.

Because this is disputed testimony, the tenant claimed that these damages pre-dated his use of the rental unit and given the landlord's failure to submit a condition inspection report or receipts, I find that the landlord failed to provide sufficient evidence to prove his claims for damage against the tenant. Therefore, I decline to award the landlord compensation for these claimed amounts.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a Monetary Order in the tenant's favour in the amount of \$775.00 for the return of the deposits to which the landlord has no entitlement.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: November 26, 2018

Residential Tenancy Branch