



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 29, 2018 (the “Application”). The Landlord applied for compensation for damage to the rental unit, to recover unpaid rent and for reimbursement for the filing fee. The Landlord sought to keep the security deposit.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord had submitted a Proof of Service in relation to the hearing package and evidence. It states that these were served on the Tenant in person on July 7, 2018 by S.W. It is signed by S.W. The Landlord witnessed this and signed the Proof of Service as a witness. I confirmed the details of the Proof of Service with the Landlord.

Based on the Proof of Service, and undisputed testimony of the Landlord in relation to the Proof of Service, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). Further, I find the Tenant was served in sufficient time to allow him to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence

submitted and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	June rent	\$2,090.00
2	Flood carpet cleaning	\$84.00
3	Ceiling repair	\$575.40
4	Flood cleaning services	\$60.00
5	Move-out cleaning services	\$180.00
6	6 x stolen storage boxes	\$72.76
7	Broken lighthouse picture	\$560.11
8	Additional cleaning / repair	\$320.00
	TOTAL	\$3,942.27

I note that the amount requested in the Application is \$3,929.00. I will consider the amount requested in the Monetary Order Worksheet given it is clear and only around \$14.00 more than the amount requested in the Application.

The Landlord submitted a written tenancy agreement as evidence. It is between the Landlord and Tenant regarding the rental unit. The tenancy started March 1, 2018 and was a month-to-month tenancy. Rent was \$2,090.00 per month due on the first day of each month. The Tenant paid a \$1,045.00 security deposit. The agreement is signed by the Landlord and Tenant. The agreement has an addendum also signed by the Landlord and Tenant.

The Landlord said he was not sure when the Tenant fully vacated the rental unit but that the Tenant said he would vacate by June 28, 2018.

The Landlord testified that the Tenant did not provide him with a forwarding address. I note that the Landlord served the Tenant in person and not at his residence.

The Landlord testified that a move-in inspection was done March 4, 2018. He had submitted the move-in inspection report signed by him and the Tenant. The Landlord testified that he provided a copy of the report to the Tenant in person on the day of the inspection.

The Landlord testified that a move-out inspection was not done. He said he talked to the Tenant on the phone about doing the inspection on the 28th but that the Tenant was not there. He testified that he served the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection on the 28th. The Landlord had submitted a copy of this as evidence. He said this was posted on the door of the rental unit. The Landlord testified that the Tenant never replied to this. The Landlord testified that the Tenant had abandoned the rental unit at that point but that he still had access to the unit. The Landlord testified that the Tenant was served with a 10 Day Notice on June 25th and that the Tenant had vacated the rental unit June 28th when the Landlord attended.

The Landlord testified that he did not do a move-out inspection on his own but that he took photos of the rental unit.

In relation to unpaid rent, the Landlord testified that the Tenant failed to pay June rent and referred to text message evidence in this regard. The Landlord submitted a text message chain between him and the Tenant in relation to rent. The text messages are from June and indicate that rent had not been paid as of June 24th.

The Landlord testified that this was a furnished rental. This is reflected in the tenancy agreement.

The Landlord testified about a leak in the rental unit caused by the Tenant. The Landlord explained the layout of the rental unit address and said the laundry room sink had been left on and overflowed. He pointed to a text message submitted in which the Tenant acknowledges being responsible for this. I have reviewed this text message. The Tenant refers to his friend leaving water on and it leaking into a room.

The Landlord testified that the Tenant offered to fix the damage but that he did not fix the damage. The Landlord relied on photos submitted and the Tenant's text messages in this regard.

The Landlord testified that water seeped through the ceiling and that there were water stains caused by the leak on the carpet in the room below. The Landlord testified that the carpet had to be cleaned due to the stains. The Landlord submitted documentation in relation to the \$84.00 paid for the carpet cleaning. The Landlord submitted a text message chain between him and the Tenant in relation to the carpet cleaning.

In relation to the ceiling repair, the Landlord provided an Invoice for this. He said the person who did the repair provided the least expensive quote. He said he has used this repair person for a long time and that he charges \$35.00 per hour plus materials. The Landlord testified that the repair person had to cut out the ceiling, patch it and paint it. The Landlord testified that the Tenant had done some repairs to the ceiling but had not repaired all the damage. The Landlord referred to photos of the damage subsequent to the leak and prior to the repair person fixing the damage.

In relation to item #4, the Landlord testified that the repair person could not clean up the room after the repairs were done and so two individuals were paid to do this. The Landlord testified that they washed windows and wiped furniture down. The Landlord testified that the cleaners were a small operation and did not provide an Invoice. The Landlord had provided documentation of an e-transfer made for the cleaning services.

In relation to item #5, the Landlord testified that another tenant at the address was going to move into the rental unit. He said he paid her \$15.00 per hour to clean. He testified that nothing had been cleaned and that she spent two days cleaning. He said there was garbage left behind, items broken, beer sprayed everywhere, dishes left in the sink and bedding left unwashed. The Landlord referred to the photos submitted in this regard. The Landlord provided a receipt for the cleaning. This shows the cleaning cost \$20.00 per hour and that the person charged for nine hours of cleaning.

In relation to item #6, the Landlord testified that the Tenant took storage bins from the rental unit. He referred to photos of belongings taken out of the bins and left on the garage floor. He referred to a quote for the cost of replacing these which had been submitted as evidence.

In relation to item #7, the Landlord testified that a piece of art in the rental unit was broken by the Tenant. He referred to a photo submitted of this. He said the glass from

the piece of art was spread throughout the upstairs of the house. The Landlord testified that it looked like the piece of art had been punched, not just dropped. He submitted a screen shot of the replacement cost for the piece of art from an art website. The Landlord advised the cost shown is in US dollars.

In relation to item #8, the Landlord testified that the tenants at the rental unit address are responsible for maintaining the yard. He referred to term 1 in the addendum to the tenancy agreement. He advised that there were tenants living downstairs from the Tenant at the rental unit address. The Landlord testified that the yard was not maintained during the tenancy. He said he did not receive a receipt for the cost of cleaning the yard as the person who did it is a friend. The Landlord testified that the clean-up took half a day and that the person charged \$20.00 per hour. The Landlord testified that the person also cleaned the rental unit. The Landlord did submit a receipt for this.

Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

The Landlord testified that a move-in inspection was done and therefore I find the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied that the Tenant extinguished his rights in relation to the security deposit under section 36 of the *Act*. I accept that the Landlord gave the Tenant two opportunities to do a move-out inspection and that the Tenant did not participate. However, section 17 of the *Regulations* required the Landlord to provide the Tenant with the Notice of Final Opportunity to Schedule a Condition Inspection. I accept that the Landlord posted this on the door of the rental unit; however, he said the Tenant had abandoned the rental unit at this point and therefore I do not find this sufficient to comply with section 17 of the *Regulations*. Therefore, I am not satisfied the Landlord complied with section 35(2) of the *Act* and not satisfied the Tenant extinguished his rights in relation to the security deposit.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security deposit as this only relates to claims for damage to the rental unit and the Landlord has claimed against the security deposit for unpaid rent.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or receiving the Tenant's forwarding address in writing to return the security deposit or file the Application claiming against it. I accept the undisputed testimony of the Landlord that the Tenant did not provide his forwarding address. I find the Landlord has complied with section 38(1) of the *Act* by filing the Application before receiving the Tenant's forwarding address.

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* states:

32...

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

Based on the undisputed testimony of the Landlord, and the tenancy agreement, I accept that the Tenant was obligated to pay \$2,090.00 in rent each month. Based on the undisputed testimony of the Landlord, and text messages submitted, I accept that the Tenant failed to pay June rent. I find the Landlord is entitled to compensation for this and award the Landlord the amount requested.

I accept the undisputed testimony of the Landlord about the leak in the rental unit. I accept that the Tenant's friend caused this based on the text messages submitted. I find the Tenant is responsible for his friend's actions in this regard. I accept that the leak damaged the ceiling and carpet in the room below based on the photos and text messages submitted. I accept the undisputed testimony of the Landlord that the Tenant did not fix all the damage. I find the Tenant breached the *Act* in this regard. I accept that the damage had to be fixed based on the undisputed testimony of the Landlord, photos and text messages. I accept that this included fixing the ceiling, cleaning the carpet and cleaning the room once the repairs were done.

In relation to the carpet cleaning, I accept that this cost \$84.00 based on the documentation submitted. I find this reasonable and award the Landlord this amount. In relation to the ceiling repair, I accept that this cost \$575.40 based on the invoice submitted. I accept the testimony of the Landlord that the person used to fix the damage provided the least expensive quote and find the Landlord did minimize his loss. I find the amount requested reasonable based on the undisputed testimony of the Landlord in relation to the repairs done. I award the Landlord the amount requested.

In relation to the flood cleaning services, I accept the undisputed testimony of the Landlord that he hired two individuals to do this cleaning. I accept the cost of this based

on the e-transfer documentation submitted. I find this cost to be reasonable based on the undisputed testimony of the Landlord in relation to the cleaning done. I award the Landlord the amount requested.

In relation to item #5, I accept that the rental unit was dirty on move-out based on the undisputed testimony of the Landlord and the photos submitted. I find the Tenant breached the *Act* by failing to leave the rental unit reasonably clean. I accept that the Landlord had to have the rental unit cleaned and accept that this cost \$180.00 based on the receipt submitted. I find the hourly rate reasonable. I also find the cost reasonable given the state of the rental unit as shown in the photos. I award the Landlord the amount requested.

Based on the undisputed testimony of the Landlord, and photos submitted, I accept that the Tenant took storage bins from the rental unit. I accept the Landlord must replace these. I accept that this will cost \$72.76 given the screen shot of the price for these submitted as evidence and considering taxes. I find this amount reasonable and award the Landlord the requested amount.

Based on the undisputed testimony of the Landlord, and photos submitted, I accept that the Tenant broke a framed picture in the rental unit. Based on the photos and undisputed description by the Landlord, I accept that this was not an accident and that the Tenant breached the *Act* by damaging the picture. I am not satisfied that the Landlord must pay \$560.11 to address this damage. The Landlord provided a quote from only one art website. It is reasonable to expect that the price may change depending on the frame. Based on the photo provided, I am not satisfied that the picture itself needs to be replaced versus the frame which would cost less. I am satisfied the Landlord is entitled to some compensation. I find half the amount requested to be reasonable and award the Landlord \$280.00.

Based on the undisputed testimony of the Landlord, I accept that the Tenant did not maintain the yard during the tenancy. I accept that the Tenant was required to maintain the lawn and garden given term 1 in the addendum. The Landlord provided some photos of the yard and garden. The Landlord did not provide detailed testimony about what was done to clean-up the yard and this is not noted in the receipt provided. I accept that some yard clean-up was required at the end of the tenancy based on the evidence. I accept that the Tenant breached the tenancy agreement by not maintaining the yard. However, the Landlord acknowledged that three other tenants at the rental unit were also responsible for maintaining the yard. Therefore, I find the Tenant is only partially responsible for the yard clean-up. I award the Landlord \$50.00 in this regard.

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	June rent	\$2,090.00
2	Flood carpet cleaning	\$84.00
3	Ceiling repair	\$575.40
4	Flood cleaning services	\$60.00
5	Move-out cleaning services	\$180.00
6	6 x stolen storage boxes	\$72.76
7	Broken lighthouse picture	\$280.00
8	Additional cleaning / repair	\$50.00
	TOTAL	\$3,392.16

Given the Landlord was successful in this application, I grant the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$3,492.16. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the security deposit in the amount of \$1,045.00. The Landlord is entitled to a further Monetary Order in the amount of \$2,447.16.

Conclusion

The Landlord is entitled to \$3,492.16. The Landlord is authorized to keep the security deposit in the amount of \$1,045.00. The Landlord is entitled to a Monetary Order in the amount of \$2,447.16. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: December 07, 2018

Residential Tenancy Branch