



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain all or a portion of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The Landlord AD (the "landlord") primarily spoke on behalf of both applicants.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to the deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on August 1, 2013. The monthly rent at the end of the tenancy was \$1,109.68 payable on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlords.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 31, 2021. The tenant issued a written notice to end the tenancy on May 2, 2021 and the tenancy ended on May 15, 2021. The tenant did not pay rent for the month of May 2021. The landlord did not provide compensation to the tenant in the amount of one month's rent pursuant to section 51 of the *Act*. The tenant gave written authorization that the landlord may deduct the amount of \$537.00, what they calculated to be the pro-rated amount of the rent for the period they occupied the rental unit from the amount payable pursuant to section 51.

The parties prepared a condition inspection report at both the start and end of the tenancy. A copy of the report was submitted into evidence. The parties noted no deficiencies at the start of the tenancy. At the end of the tenancy the landlord submits that there was considerable damage to the rental unit and noted them in the report dated May 16, 2021. The tenant was represented by their agent at the move-out inspection and they did not agree with the landlord's assessment of damages. The tenant did not authorize the landlord to make any deductions from the security deposit for this tenancy. A forwarding address was provided at the inspection and noted on the report. The landlord subsequently filed their application for dispute resolution on May 28, 2021.

The landlord submits that the rental unit floors and carpeting was damaged, discolored and stained by the tenant's pet cat. The landlord says that as a result of the pervasive odor and damage done by the tenant the whole flooring needed to be redone, cleaned and deodorized. The landlord also submits that there was various damage throughout the tenancy including screen doors and windows, appliances that were malfunctioning and doorknobs that were broken. In addition to the condition inspection report the landlord submitted numerous photographs of the suite, statements from witnesses

attesting to the pervasive odor and damage observed and various receipts for the work done.

In their application the landlord claims a monetary award of \$20,000.00 for the damages and losses. The landlord submitted a monetary order worksheet which provides a sum of \$17,872.00. The landlord testified that they have provided all receipts that were available at the time of filing their application but additional costs have been incurred.

The tenant disputes that the rental unit incurred anything more than the expected wear and tear from a tenancy of this duration. The tenant disputes any monetary claim by the landlord and submits that the rental unit needed no repairs, cleaning or additional work. The tenant provided some photographs taken at the end of the tenancy in support of their position.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord seeks an award for unpaid rent for the period of May 1 to May 15th in the amount of \$537.00.

Section 51 of the *Act* provides that a tenant who receives a notice to end a tenancy for landlord's use is entitled to monetary compensation in an amount equivalent to one month's rent under the tenancy agreement.

The parties confirmed that the landlords have not issued any monetary compensation as at the date of the hearing. The parties further testified that the tenant occupied the rental unit from May 1 to May 15th and failed to pay rent for that time. The tenant calculates the per diem amount owing for this time is \$537.00 and they authorize the landlord to deduct this amount from their monetary compensation due under section 51.

Accordingly, as the parties agree that this amount is owing I issue a monetary award in the landlord's favour for the amount of \$537.00.

Residential Tenancy regulation 21 provides that:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is 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 the matter at hand the parties participated in a move out inspection and prepared a condition inspection report on May 16, 2021. The tenant was represented by an agent as permitted under regulation 15(1). The tenant's agent disagreed with the landlord's assessment of damages and declined to sign the inspection report.

I do not find the handful of photographs submitted by the tenant nor their testimony to be sufficient evidence to overcome the condition inspection report completed in accordance with the Act and regulations. I find that there is no preponderance of evidence to demonstrate that the condition inspection report is not an accurate representation of the state of repair of the rental unit as at May 16, 2021.

While I find that there has been some damage to the rental unit that is attributable to the tenancy I am not satisfied on the basis of the submissions that the landlords have established the full amount of their monetary claim.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that much of the landlord's evidentiary materials have been submitted in a haphazard and poorly organized manner that makes their interpretation challenging. The landlord filed multiple files in a variety of formats rather than a single pdf file with numbered pages. The file names are inconsistent and unclear as to the contents and have been uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. Many of the submitted receipts are faded, out of focus or otherwise illegible. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation and quality of materials detrimentally affects the strength of submissions.

I find that much of the landlord's submissions consists of receipts for various items which are submitted without sufficient information to link them to the actual damage caused by the tenancy. I find that many of the items claimed or the nature of the work the landlord undertook is more in the nature of upgrades or improvements rather than restoring the rental unit to its pre-tenancy condition.

I am not satisfied with the landlord's submission that it was necessary to perform a complete reflooring and recarpeting of the rental suite including the replacement of underlay, trim and drywalls. I find the description of the work to be excessive and am not satisfied with the subjective observation from witnesses that this was necessary to make the suite inhabitable. The evidence is that the tenant resided in the rental unit until the tenancy ended. I am not satisfied that the observations of the landlords, their family members or other landlords to be sufficient to establish that the condition of the rental unit necessitated the level of work performed.

I also note that Residential Tenancy Policy Guideline 40 provides guidance on the expected life of building elements. I find that many of the items claimed by the landlord are or were approaching the end of their expected life. During the 8 years of this tenancy there is no evidence that there was any major restoration work performed. Items such as carpets and flooring are expected to have a useful life of 10 years while painting on interior walls are expected to be useful for 4 years. It is expected that the landlord would have been required to replace some of the items that they are currently claiming at the end of the tenancy or shortly thereafter due to the age of the property.

Based on the totality of the evidence of the parties and for the reasons outlined above I find that the landlords have incurred some costs due to the tenancy. I find that the amount of damage and losses suffered to not be as significant as the amount claimed by the landlords in their application, that they chose to incur some of the expenses for upgrades to the rental unit and that some costs would have been borne in any event. Taking all of the foregoing into consideration I find that a \$4,000.00 monetary award to be appropriate under the circumstances.

As the landlords were partially successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,027.32 on the following terms:

Item	Amount
Award for Damages and Loss	\$4,000.00
Filing Fee	\$100.00
Unpaid Rent	\$537.00
Less Security Deposit	-\$500.00
Less s51 Compensation to Tenant	-\$1,109.68
TOTAL	\$3,027.32

The tenant must be served 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 *Residential Tenancy Act*.

Dated: November 26, 2021

Residential Tenancy Branch