



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL, MNDCL, MNDL

Introduction

The Landlord seeks the following orders under the *Residential Tenancy Act* (the “Act”):

- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of its filing fee pursuant to s. 72.

The Landlord filed an amendment adding the following claims:

- A monetary order pursuant to s. 67 seeking compensation for monetary loss or other money owed; and
- A monetary order pursuant to s. 67 seeking compensation for damaged to the rental unit by the Tenants.

D.A. appeared as the agent of the Landlord and advised he was the Landlord’s owner. G.C. appeared as the Tenant. The co-tenant, D.K., did not appear nor did someone appear on his behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the co-tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that both tenants were served with the Notice of Dispute Resolution, evidence and amendment. The Landlord advised that G.C. was served via registered mail sent on December 29, 2021 and personally served with the amendment.

G.C. acknowledged receipt of the Landlord's application materials, including the amendment. The Landlord further advised that D.K. was served personally served on December 29, 2021 and personally served with the amendment after it had been filed. D.K. was not present to confirm service, however, the Landlord provides a photograph of him personally serving the application materials on December 29, 2021. I find that the Landlord served its application materials on both named respondents in accordance with s. 89 of the *Act*.

The Tenant advised that he served responding evidence on the Landlord by way of regular mail. The Landlord denies receipt of the Tenant's response evidence. General methods of service under the *Act* are set out under s. 88, whereas s. 89 provides specific methods of service for dispute resolution hearings. Section 88 permits service via regular mail. Section 89 requires service to be via registered mail.

I find that the Tenant failed to serve his response evidence in accordance with s. 89 of the *Act*. I decline to find the documents were served as the method was not in compliance with the *Act* and the Landlord specifically denied receiving the evidence. As the Tenant's response evidence was not served, it is not included as evidence and shall not be considered by me. The Tenant was free to make oral submissions at the hearing.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to a monetary order for damage to the rental unit?
- 3) Is the Landlord entitled to a monetary order for other money owed?
- 4) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- Rent of \$1,750.00 was due on the first day of each month.
- A security deposit of \$875.00 had been paid to the Landlord.

The Landlord put a copy of the tenancy agreement into evidence. The Landlord confirmed that the tenant's took occupancy of the rental unit on August 1, 2020.

The Landlord advised that he had obtained an order of possession and monetary order for unpaid rent in a previous application before the Residential Tenancy Branch. The Landlord provided the file number for the other matter. Review of that file indicates it had been filed by the Tenants disputing a 10-day notice to end tenancy. The hearing was conducted on December 9, 2021 and the decision and orders were issued on December 13, 2021.

The Landlord confirmed that the monetary order from that file related to unpaid rent for November and December 2021. Unpaid rent was found to be \$3,500.00 and the security deposit of \$875.00 was applied to the arrears such that the total monetary order was \$2,625.00. The Landlord testified that the Tenant G.C. paid \$2,200.00 on December 23, 2021, which was confirmed by the Tenant.

The Landlord's evidence includes a separate application filed by the Landlord as a direct request application. As part of the Landlord's direct request application, the Landlord obtained on December 22, 2021 an order of possession and a monetary order for unpaid rent for November 2021.

The Landlord testified that he entered into an agreement on December 17, 2021 with the Tenants such he would forestall enforcement of the order of possession obtained on December 13, 2021 until December 23, 2021 provided the arrears on the monetary order were paid by December 23, 2021. As mentioned above, on a portion of the amount owed under the previous order had been paid, leaving a balance owed of \$425.00.

At the hearing, the Landlord advised that the December 17, 2021 agreement was put into evidence. However, no copy of the letter was provided to the Residential Tenancy Branch. The Landlord testified to providing another extension to the tenants to vacate the rental unit by January 1, 2022 due to it being the Christmas season.

The Tenant testified to a dispute between he and his co-tenant D.K. that occurred on October 30, 2021. G.C. indicates that he moved out of the rental unit at that time and only returned on one occasion with the police to retrieve his clothing. The Landlord indicates that he only learnt of the dispute recently and indicates that he met with both

tenants in December 2021 and that, from his observation, there was no apparent conflict between them at that time.

The Landlord testified at the hearing that the Tenant D.K. moved out of the rental unit on January 6, 2022 and that the rental unit was not cleaned nor were the tenants belongings removed. The Landlord's evidence includes an email, presumably from D.K., confirming he would be moving out on January 3, 2022.

Photographs of the rental unit were put into evidence by the Landlord, include receipts in the following amounts:

Invoice	Date	Amount
Junk Removal	January 5, 2022	\$1,065.33
Cleaning	January 11, 2022	\$1,260.00
Painting	January 12, 2022	\$976.50
Carpet Cleaning	January 12, 2022	\$2,100.00
Total		\$5,401.83

The Landlord advised he was claiming these amounts and testified to the state of the rental unit, including damage to the walls, carpet stains, and the extent of personal belongings that had been left behind.

The Tenant argued that he should not be responsible for the costs except for half the carpet cleaning cost as he had vacated the rental unit on October 30, 2021. He says that furniture mostly belonged to D.K. and that D.K. had agreed to clean out the rental unit and deposit the furniture that belonged to him to a storage locker. The Landlord testified that D.K. had told him the furniture mostly belonged to G.C..

The Landlord emphasized that G.C. signed an agreement on December 31, 2021 in which he agreed that the contents would be removed and that the Landlord could dispose of items that were left behind. The Landlord testified that this document was in evidence. However, no copy was provided to the Residential Tenancy Branch. The Tenant did not dispute signing an agreement on December 31, 2021, though emphasized that it was D.K.'s responsibility to remove the belongings from the rental unit.

The Landlord testified that he is seeking rent for January 2022. G.C. testified that he had already vacated the rental unit and that he was not party to any agreement to

extend occupancy of the rental unit. G.C. argued that if there is any liability for January 2022 rent, it rests entirely with D.K.

Analysis

The Landlord seeks various monetary orders.

Policy Guideline #13 provides guidance with respect to the rights and responsibilities of co-tenants. It states the following which is relevant to this dispute:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. **Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.**

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

D. DEBTS OR DAMAGES

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. **For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.**

In a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the Residential Tenancy Act nor the MHPTA and cannot be resolved through the Branch.

(Emphasis added)

Policy Guideline #13 is clear that co-tenants are jointly and severally responsible for the obligations that arise out of the tenancy. G.C. made various submissions that he is not responsible for cleaning the rental unit as it was D.K.'s responsibility to do so. None of these submissions are relevant. Both G.C. and D.K. are listed as tenants under the tenancy agreement. G.C. did not advise that he gave notice that he would be vacating the rental unit and it appears based on the December 13, 2021 decision the Landlord knew of G.C. vacating the rental unit until the hearing on that occasion, which was confirmed by G.C. at the hearing for this matter. There was no separate tenancy agreement between the Landlord and D.K.. Even if G.C. vacated on October 30, 2021, he cannot avoid his obligations under the contract unless the parties to the agreement alter its terms, either expressly or through conduct. I find that that did not occur here.

I find that G.C. and D.K. are co-tenants to the tenancy agreement and are jointly and severally liable for any compensation owing to the Landlord following the end of the tenancy.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or

the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Dealing first with the Landlord's claim for rent for January 2022. The Landlord says that he obtained vacant possession of the rental unit on January 6, 2022, though that is directly contradicted by the junk removal invoice, which is dated on January 5, 2022. The Landlord's evidence includes an email indicating that D.K. would vacate on January 3, 2022. Given these conflicting dates, I cannot make a finding on the specific date the Landlord obtained vacant possession of the rental unit. However, I do accept that vacant possession obtained in early January 2022.

There is an issue, however, with the Landlord seeking rent for January 2022. There is no dispute the Landlord received an order of possession on December 13, 2021. Despite this, the Landlord forewent taking steps to enforce the order until the rental unit. The rental unit was eventually vacated voluntarily by early January 2022. I accept that it was the Christmas season and the Landlord was likely acting charitably under the circumstances. However, the Landlord has a clear obligation to mitigate or minimize its damages. The Landlord had an order of possession, it could have enforced it.

Further, the obligation to pay rent flows from the tenancy agreement. Based on the December 13, 2021 decision, the tenancy ended on that date. It is unclear what obligation the Tenants had with respect to continued rent payment as the tenancy was over. The tenants may have been overholding. However, the Landlord had the option of enforcing the order of possession. The Landlord testified to various forbearance agreements, though none were put into evidence.

Under the circumstances, I find that the Landlord has failed to mitigate its damages by delaying the enforcement of the order of possession granted on December 13, 2022. I decline to grant an order for unpaid rent for January 2022.

The Landlord's amendment seeks an additional amount of \$425.00, which both the amendment and the monetary order worksheet indicate relates to the balance owed from the December 13, 2021 monetary order. The Landlord is seeking an additional order for an amount that has already been ordered.

The Landlord is, essentially, double-dipping by claiming this amount again. Indeed, that appears to have occurred here already with respect to rent from November 2021 based on the December 22, 2021 direct request decision and the December 13, 2021 decision and order referred to me by the Landlord. I am uncertain why the Landlord obtained two orders for November 2021 rent. Perhaps the Landlord failed to disclose to the arbitrator that he had filed a direct request application. I do not know. Seeking the same amount twice is highly inappropriate both as it contravenes the general principle that one can only be compensated for the actual loss sustained and leads to general confusion related to the enforcement of what is owed.

It is undisputed that the Tenant G.C. paid \$2,200.00 on December 23, 2021 related to the December 13, 2021 monetary order. The Landlord has an order and may take steps to enforce whatever is outstanding if it chooses to do so. The amount claimed of \$425.00 is dismissed without leave to reapply as the amount claimed has already been ordered and, thus, has already been decided.

Dealing finally with the damages claimed, I find that it is likely that the dispute between the tenants had a direct result in the state of the rental unit when vacant possession was obtained by the Landlord. There was some conflicting testimony on whether the furniture belonged to D.K. or G.C.. As mentioned above, that dispute is not relevant as the co-tenants are jointly and severally liable for their obligations under the tenancy agreement.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

I have reviewed the photographs provided by the Landlord and find that the Tenants failed breached their obligation under s. 37(2) to leave the rental unit in a reasonably clean and undamaged state. Indeed, it does not appear any of the Tenants' belongings

were removed or the rental unit cleaned at all. There was significant damage to one wall and carpet stains present. The Tenant did not argue that these were present prior to the beginning of the tenancy, only that D.K. caused the wall damage. Indeed, the Tenant admits being responsible for the carpet damage when he indicates that it would be appropriate that he pay half of that cost.

I find that the Landlord has established a monetary claim in the amount of \$5,401.83, representing the total of the four invoices it put into evidence. I find that given the state of the rental unit the Landlord could not have reasonably mitigated his damages under the circumstances.

I note that landlords are under certain obligations under Part 5 of the Regulations with respect to personal property that is abandoned by tenants at the end of the tenancy. Neither party made submissions on this point other than the Landlord testifying that it had an agreement signed by the tenants on December 31, 2021 permitting it to dispose of the property that was left behind at the rental unit. The Tenant did not deny this point. I make no findings with respect to the manner in which the Landlord disposed of the property left behind by the Tenants.

Conclusion

I dismiss the Landlord's claim for unpaid rent and compensation for other money owed.

I grant the Landlord's claim for compensation related to damages to the rental unit in the amount of \$5,401.83.

The Landlord was largely successful in his application. I find he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlord's \$100.00 filing fee.

I make a total monetary order pursuant to ss. 67 and 72 of the *Act* and order that the Tenants pay **\$5,501.83** (\$5,401.83 + \$100.00) to the Landlord. As described above, the Tenants are jointly and severally liable to the Landlord with respect to this amount.

It is the Landlord's obligation to serve the monetary order on the tenants. If the tenants do not comply with the monetary order, it may be filed by the Landlord with 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: July 27, 2022

Residential Tenancy Branch