



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

The Landlord filed their Application for Dispute Resolution on March 13, 2022 seeking compensation for damage caused by the Tenant, unpaid rent, and other money owed. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on November 10, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance. On this basis, the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, damages to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The parties spoke to the basic terms of the tenancy agreement in the hearing, and both provided a copy of that agreement. The tenancy started on February 15, 2020, for a fixed set

to end on February 15, 2022, with the rent amount at \$5,600. The Tenant paid a security deposit of \$3,000.

As stated by the Landlord in the hearing, they did not agree to the Tenant subletting to others. They found out subtenants in the rental unit were erecting walls that served as “illegal rooms in the house”. At some point no monthly rent was paid and the Landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent in January 2022.

The Tenant in the hearing stated the Landlord was fully aware of the subtenancy situation in the rental unit. The Tenant here moved out from the rental unit in 2020, then renting out to sub-tenants, both upper and lower. According to the Tenant, they had the Landlord’s approval.

The tenancy ended by the Landlord’s own initiative and through a dispute resolution process they were granted an Order of Possession. The Landlord hired a bailiff to complete the practical matter of ensuring occupants at the rental unit moved out after the Landlord served the Order of Possession.

i. damage in the rental unit

The Landlord and Tenant jointly attended a move-out inspection meeting at the rental unit on March 7, 2022. The Landlord completed a Condition Inspection Report (as it appears in their evidence); however, the Tenant would not sign that document.

This document in the Landlord’s evidence shows an inspection for the end of the tenancy on March 7, 2022, noting the move-out date of February 25, 2022. Noted:

- doors damaged, entry
- tiles dirty, entry
- frame & door damaged, 2nd bedroom
- cut wires, damaged, garage
- sub-tenant changed lock without permission
- missing parking remote control
- unit was very dirty with a lot of items left behind by sub-tenant
- walls, trim, floors were damage from unapproved framed rooms
- garage wires were cut
- fireplace is dirty with cigarette butts
- kitchen appliances dirty
- missing cabinet door and a dented cabinet door
- garage door is damage, sub-tenant cut a piece of it off to fit their wires

- main basement door is scratched and dirty

The Landlord provided a project estimate sheet dated March 8, 2022 for damage and replacement costs. This total estimate is \$17,960.25. This divided the itemized areas of work as follows:

- garbage removal & clean out fireplace: \$1,500
- removal of unapproved addition of a bedroom and hallway: \$750
- damaged doors and replacement costs: \$3,450 + \$1,500 installation
- damaged screens & replacement costs: \$1,050
- damaged lighting bedroom light fixture & installation: \$350
- painting: \$4,900
- damaged flooring & polishing: \$1,500
- damaged tiling in bathroom: \$300
- delivery/transportation: \$250

The Landlord provided 40 pictures as evidence of damage throughout the rental unit. Featured are photos of a backyard with a large amount of garbage, labelled as “leftover belongings and garbage from [the Tenant’s] tenant.” Also, a doorframe was cut/altered to run wires into the house, and the kitchen was virtually uncleaned with dishes in the sink and a broken cabinet door and dirty appliances and a full fridge. There are photos showing “unapproved bedrooms”: this is framing for walls that damaged the flooring, with materials remaining after the end of the tenancy.

The Landlord also included video they made of the state of the rental unit basement on move-out day February 25, and other precise areas of damage taken during the move-out inspection on March 7.

The Landlord also included an invoice dated April 25, 2022, from the same firm that provided their estimate, showing payment of \$18,847.50. The Landlord confirmed this work was completed in April. The invoice shows:

- garbage removal & fireplace clean-out: \$1,200
- removal of unapproved addition of a bedroom and hallway: \$700
- damaged doors and replacement costs: \$3,750
- damaged screens & replacement costs: \$1,050
- damaged lighting bedroom light fixture & installation: \$350
- painting: \$4,150
- wood vinyl flooring throughout: \$6,500

- delivery/transportation: \$250

On their Application of March 13, 2022, the Tenant applied for the amount listed in the estimate they provided in their evidence: \$17,960.25. The Tenant provided the paid invoice (amount \$18,847.50) to the Residential Tenancy Branch on October 26, 2022, uploaded via the hearing portal. They sent this invoice via registered mail to the Tenant on October 26, 2022, noting with reference to the tracking number that the post office notified the Tenant of delivery on November 3, 2022. The Tenant did not retrieve the item from the post office as of the date of the hearing.

The Tenant spoke to the matter of needed repairs or item replacement in the hearing. They described the move-out inspection on March 7 as being delayed since their actual move-out date on February 26. By the time of the move-out inspection meeting, the Landlord had begun work, using drills to remove doors and other materials, so the state of the rental unit as at the end of the tenancy had already changed by the time of the joint inspection. The Tenant also described some of these items being normal wear and tear accrued throughout the duration of the tenancy.

Specifically on the window screens, the Tenant acknowledged these were damaged but not new at the start of the tenancy in 2020. Additionally, the light fixtures were not new at the start of the tenancy. With regard to the March 13 estimate, the Tenant noted the Landlord “could decide to do any work” of their choosing, and this was not damage from the Tenant. They reiterated that the house was old, noting a flooding incident as well as a shut down of heat within the rental unit during the tenancy.

The Landlord acknowledged work within the rental unit had already begun by March 7. They already started painting walls, and the floor was more damaged than on February 26 due to removal of framework and walls constructed by the sub-tenants.

The Tenant also provided receipts for the hired service of garbage removal, by a company that normally handles moving and/or storage. A message from that service to the Tenant notes “[the junk removal services] removed everything in the garage and the basement.” The Tenant provided photos of the garage and the rooms in question in their evidence.

The Tenant also presented that at the start of the tenancy in 2020, the floor was damaged, the doors were old, the cabinets were “wiggly”, and the light fixtures were old. Their understanding was that the previous Tenant had lived there for around 10 years and there were no renovations at the start of this tenancy in 2020. Further, there was no formal inspection at the start of the tenancy, and everything at the beginning of the tenancy was based on “trust and

goodwill.” The Tenant also described the *Residential Tenancy Branch Policy Guideline #40*, that which deals with the useful life of building elements, submitting that items at issue in this tenancy were well beyond their useful life.

The Landlord responded to this to state at the start of the tenancy there were not holes in the walls, tile damage, or missing doorknobs as shown in their photos.

ii. rent amounts owing

The Landlord submitted the sub-tenants could pay rent directly to the Landlord, with that being the direction from the Tenant to the Landlord. They issued a 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant after not receiving rent directly from the sub-tenants here. This led to an eviction process in which the Landlord enlisted a bailiff, and they enforced the Order of Possession on February 12, 2022.

The Landlord did not receive the full amount of rent for February 2022, with the \$1,800 as claimed being the amount of rent payable from the downstairs sub-tenants via the Tenant to the Landlord. The Landlord provided a rent ledger showing upstairs sub-tenants paying rent for \$3,800.

The Tenant acknowledged that the sub-tenants did not pay rent; however, this was due to the state of the rental unit and lack of repairs undertaken by the Landlord.

The parties stated their respective positions on whether the situation was truly that of a sub-lease. The Tenant proposed that the sub-tenant should be liable directly for the rent amount owed; the Landlord maintained that they did not initially agree to any subleasing.

iii. other money owing

On their Monetary Order Worksheet, completed on March 13, 2022 as part of their Application, the Landlord provided the amount of \$2,213.31. They listed bailiff, movers, and locksmith for this separate line of expenses claimed.

The Landlord provided an invoice dated March 4, 2022 for the court bailiff fees associated with enforcement of the Order of Possession. This amount for total fees & disbursements was \$889.05. There was a staggered deposit of \$2,213.31 in total. The Landlord provided this broke down to the following costs: \$1,134 for the moving fees in order to remove items from the rental unit; \$190.26 locksmith fees, and the bailiff work for \$889.05.

The Landlord also provided a receipt from the court registry dated February 22, 2022. This amount of \$120 paid, as labelled by the Landlord for this piece of evidence, was for the filing fee.

Analysis

I find the Landlord has established that there was a sub-tenancy situation in place. The original Tenant here remained the Tenant of the Landlord and was the “landlord” of the sub-tenants who occupied the rental unit. There was no contractual relationship between the Landlord here and the sub-tenants. The Tenant is thus responsible to the Landlord here for the terms of the tenancy agreement and is subject to all legal rights and obligations as established in the *Act*.

I find whether the Landlord knew of the Tenant sub-letting to others is immaterial. The tenancy agreement clearly established the rights and obligations between the Landlord and Tenant here. There is no evidence of an exclusive sub-tenancy agreement, or other arrangements between the Landlord and the sub-tenants, that runs counter to this tenancy agreement to which the *Act* applies.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

i. damage in the rental unit

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The *Act* also establishes certain requirements for the start of a tenancy. There is a requirement for a landlord and a tenant together to inspect the condition of the rental unit, as per s. 23. A landlord must complete a condition inspection report to document that meeting. This affects the Landlord's entitlement to a deposit; however, the Landlord did not claim against the deposit here. As a matter of evidence presented by the Landlord here, I find there is no documentation or other proof of the state of the rental unit at the start of the tenancy in the evidence. This informs my analysis of their claim for damage in the rental unit.

On certain points I accept the Tenant's description of the rental unit as being in a less-than-pristine state at the start of the tenancy. The Tenant referred to the concept of the useful life of building elements. I find as fact that certain parts of the rental unit – more likely than not and on a balance of probabilities – required repair or replacement in any event regardless of this tenancy. This is due to the age and state of repair of the rental unit at the start of the tenancy. At the same time, I have considered the Landlord's evidence of damage or extra uncleanliness in the rental unit at the end of the tenancy.

I find the Landlord duly served the Tenant with extra evidence for this hearing; that is the April 25, 2022 invoice they provided for work completed. With reference to that invoice, I find as follows:

- There was an extant amount of garbage and other detritus left at the rental unit at the end of the tenancy. This meant the Landlord incurred substantial expenses to deal with it. Minus contrary evidence of an alternate means of dealing with the garbage or a more suitable expense, I grant the amount to the Landlord as paid in the April 28 invoice: \$1,200. While the Tenant provided their own invoices for cleaning and removal of items from the rental unit, I find it more likely than not that the Landlord also incurred significant expense because of the need for further material removal stemming from the tenancy in the whole of the rental unit property.
- The Landlord should in no way shape or form pay for any expenses associated with extra structures erected as extra rooms within the rental unit. I find the Landlord

credible on their evidence that this was not approved at any time during this tenancy. I grant the Landlord compensation for the cost associated with these extra rooms: \$700

- There was no evidence on the state of the rental unit at the start of the tenancy. Because of this, I find the Landlord did not show positively that replacement or repair of all doors, certain amounts of the screens, a lighting fixture, and painting throughout was necessitated by damage by the Tenant here. I dismiss these portions of the Landlord's claim.
- What the Landlord has shown of the flooring within certain areas of the rental unit does not prove damage by the Tenant here to an extent requiring replacement throughout. I find the flooring was beyond its useful life cycle in any event, and I grant no compensation for flooring replacement throughout the rental unit without more evidence of the need for that. I also consider there was no account of the state of the rental unit as at the start of this tenancy.
- I grant no award for delivery or transportation as set out on the invoice. I find it more likely than not that refers to materials involved with the majority of the work involved with flooring, painting and doors which I have dismissed above.
- I grant an applicable tax amount for the \$1,900 I granted above: this is an additional GST 5%: \$95.

ii. rent amounts owing

I find as fact the tenancy ended because of unpaid rent. This is with reference to the dispute resolution process referred to by the Landlord in this present hearing. I find it more likely than not, based on the evidence presented by the Landlord, that a rent amount owing remains outstanding. Minus evidence from the Tenant showing otherwise, I find the Landlord has provided sufficient evidence to show the amount of \$1,800 remains outstanding. The Tenant provided no record authorizing a reduction in rent because of the state of the rental unit or lack of repair from the Landlord. I grant the Landlord \$1,800 as claimed here.

iii. other money owing

The Landlord produced evidence of each of the costs associated with vacating the sub-tenants (i.e., the Tenant) from the rental unit on February 18, 2022. I find they have established the value of this monetary loss. Moreover, I find this loss results from the Tenant's violation of the *Act* where the sub-tenants (i.e., the Tenant) did not vacate the unit upon receiving the Order of Possession served by the Landlord.

A Write of Possession is the only legal avenue by which a landlord may enforce an Order of Possession. By this method, there is no means for the landlord to mitigate the loss. By doing

so in a timely method, I find the Landlord here minimized their other losses such as incurring further unpaid rent going forward.

I find the Landlord established their claim for the amounts as follows:

- \$1,134: the costs associated with bailiffs attending and removing items from the rental unit fully;
- \$190.26 for locksmith fees, where the Landlord had indicated on the Condition Inspection Report that sub-tenants had changed the locks at the rental unit;
- actual bailiff work for \$889.05.

Additionally, though not claimed initially, the Landlord presented evidence of the Supreme Court filing fee, incurred on February 22, 2022. I find this is valid proof of the filing fee they paid in order to obtain a Writ of Possession, entirely stemming from the sub-tenants (i.e., the Tenant) overstaying after receiving the Order of Possession. I grant this amount of \$120 to the Landlord.

In sum, for this part of the Landlord's Application, I grant the full award of \$2,333.31. The Landlord would not have incurred these expenses but for the actions of the Tenant at the end of the tenancy.

In total, I grant compensation to the Landlord in the amount of \$6,128.31. Because the Landlord was moderately successful in their claim, I find they are not eligible for one-half of the Application filing fee. I add \$50 to the award for this.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$6,178.31 for damage in the rental unit, a specific rent amount owing, other money owing, and the Application filing fee.

I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: December 6, 2022

Residential Tenancy Branch