



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that he is not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agent confirmed the landlord's email addresses for service of this decision and order

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on July 21, 2022. A receipt and tracking history for same were entered into evidence. The tracking report states that the package was picked up by the tenant on August 10, 2022. I find that the tenant was served with the above documents in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on August 1, 2020 and ended on June 30, 2022. Monthly rent in the amount of \$1,471.75 was payable on the first day of each month. A security deposit of \$725.00 and a key deposit of \$100.00 were paid by the tenant to the previous landlord. A written tenancy agreement was signed by the tenant and submitted for this application.

The agent testified that the tenant did not pay all of June 2022's rent and owes the landlord \$1,397.12 in unpaid rent and a \$25.00 late rent fee. A ledger showing same was entered into evidence. Section 10 of the tenancy agreement states that the landlord is entitled to charge a \$25.00 fee for late payment of rent.

The agent testified that the carpet required cleaning at the end of the tenancy and the landlord is claiming \$130.00 for that cleaning. No receipts were entered into evidence. The agent testified that the carpet cleaning was conducted by a third party and that the cost was higher than \$130.00.

The agent testified that a move out condition inspection and report were conducted with the tenant. The move out condition inspection report was entered into evidence and states that the carpet required cleaning and states that the chargeback amount is \$130.00. The agent testified that the tenant did not authorize the landlord to retain any portion of her deposit. The move out condition inspection report does not state that the tenant agrees with the report.

The move out condition inspection report does not note that any other portion of the subject rental property required cleaning. Later in the move in condition inspection report the report states that two hours of cleaning was required in the subject rental property and the chargeback amount is \$80.00; the report does not state where or why additional cleaning was required. Three photographs were attached the move out condition inspection report which show dirty carpet in a bedroom, no dirt behind a fridge and some dirt in the area under the stove where the lower drawer was removed. No receipts for the cleaning were entered into evidence.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,471.75 on the first day of each month. Based on the testimony of the agent and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$1,397.12 in unpaid rent for June of 2022.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord is entitled to collect the \$25.00 late fee for June 2022's rent, I note that the tenancy agreement provides for that fee at section 10.

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or 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; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 onus to prove their case is on the person making the claim.

Section 21 of the Residential Tenancy Act Regulation states:

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.

The move out condition inspection report did not note that any specific area of the unit required cleaning (other than the carpets which are dealt with separately), only that two hours of cleaning were required. I find that the photographs of behind the fridge and under the stove drawer do not show cleaning required that would reasonably take two hours to complete. I find that the landlord has not provided a preponderance of evidence to contradict the move out condition inspection report which states that the only area requiring cleaning is the carpets.

I find that the dirt underneath a drawer of an oven is over and above the cleaning required in the unit. I find that the agent has not proved, on a balance of probabilities, that the tenant breached section 37 of the *Act* by leaving the rental unit unreasonably dirty. I therefore dismiss this claim.

The agent did not enter into evidence receipts, invoices or estimates proving the value of the carpet cleaning, and thus the agent has failed to prove the value of the loss suffered.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the move out condition inspection report and the photograph entered into evidence, I find that the tenant breached section 37 of the *Act* by leaving the carpets unreasonably dirty. I find that while the landlord has not proved the value of the loss, the landlord has proved that a loss was suffered. I award the landlord \$100.00 in nominal damages for carpet cleaning.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and key deposit in the amount of \$825.00 in part satisfaction of their monetary claim against the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
June rent	\$1,397.12
Late payment fee	\$25.00
Nominal damages	\$100.00
Filing Fee	\$100.00
Less deposits	-\$825.00
TOTAL	\$797.12

The landlord is provided with this Order in the above terms and 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: March 28, 2023

Residential Tenancy Branch