



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for unpaid rent, damages and reimbursement of the filing fee. The landlord applied for authorization to retain the security deposit and pet damage deposit.

Both parties appeared at the hearing. At the outset of the hearing, I confirmed the landlord had served the tenants with their Notice of Hearing and supporting documents. The tenant PM, appearing on behalf of both tenants, confirmed receipt. I have considered all the submissions and evidence presented to me, including those provided in writing and in oral testimony.

Issues to be Decided

1. Is the landlord entitled to recover the amounts claimed for unpaid rent and damages under Sections 26, 37, and 67?
2. Is the landlord authorized to retain all or part of the tenants' security deposit and/or pet damage deposit pursuant to Section 38(1)(d)?
3. Is the landlord authorized to reimbursement of the filing fee pursuant to Section 72?

Background and Evidence

The parties entered into a written tenancy agreement ("the Agreement") for a fixed term tenancy set to commence on June 1, 2017 and end November 30, 2017. Rent was \$1,350.00 a month payable on the first of the month. The tenants paid a security deposit of \$675.00 and a pet deposit of \$675.00 for a total of \$1,350.00 ("the deposits").

The Agreement contained a term the tenancy may continue as a month to month tenancy at the end of the term unless the tenant or landlord gave one month notice to end the tenancy.

The tenants provided testimony they had a verbal agreement with the landlord's representative (not present at the hearing) prior to moving in. They state the unit was advertised for a term of one year. As they only required accommodations in that area for six months, they negotiated a fixed term for that period only with a clear understanding the tenants would leave at the end of the term.

The tenants provided no evidence of any such agreement. They point to their email of November 11, 2017 to the landlord two weeks before they vacated in which they refer to leaving at the end of the month. However, this does not reference any agreement at the start of the tenancy outside the written Agreement nor does it provide one month's notice.

The tenants did not believe they were required to provide one month's notice. Accordingly, they did not do so and vacated the premises at the end of November 2017.

At the outset of the hearing, the landlord withdrew the claim for touch-up of the wall for \$75.00.

During the hearing, the tenants agreed to reimburse the landlord for the following claimed expenses:

Replacement of fridge door	\$89.59
Move-out fee required under the Agreement	\$50.00
Total Expenses Agreed to be Paid by Tenant	\$139.59

However, the tenants dispute the landlord's claimed expense of \$72.45 for cleaning the premises after the tenants vacated. The landlord submitted photographic evidence of areas needing cleaning along with email communication from the cleaners. The tenants testified the floors in the premises were not clean when they moved in and it was not reasonable for the landlord to expect everything to be clean when they moved out.

A Condition Inspection Report was completed at the time of move-in. The landlord testified the unit was new at that time. The landlord stated the tenants were provided with notice of the scheduling of the move-out report but did not attend. The landlord

completed the report in the absence of tenants which was submitted in evidence. The report indicates the cleaning was required.

On December 15, 2017, the landlord applied under Section 38(1)(d) within the 15-day period to retain the security deposit in partial satisfaction of the landlord's claim.

The parties agree the tenants provided their forwarding address in writing to the landlord at the time they vacated the premises. The tenants did not authorize the landlord to retain any portion of their deposits at any time. The tenants have not received a refund of their deposits.

Analysis

Rent

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.** (emphasis added)

Section 44(3) states that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Since the tenancy agreement stipulates that the tenancy could convert to a month to month tenancy at the end of the fixed term and did not require the tenants to vacate the rental unit the tenants were required, to end the tenancy at the end of the fixed term, the

tenants must give the landlord a notice to end tenancy that complied with the requirements set forth under Section 45(2).

Therefore, the tenants were required to provide notice in this case on or before October 31, 2017 stating they were leaving on November 30, 2017. The tenants did not provide the notice required under Section 45(2) and under the Agreement.

The Agreement is clear that the tenants are expected to give one month's notice of vacating the premises. The tenants offered no evidence of any agreement to the contrary other than their testimony there was a verbal agreement in addition to the written Agreement. In the absence of any such evidence, I find the landlord is entitled to one month's notice.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

Liability for not complying with this *Act* or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do **whatever is reasonable to minimize the damage or loss**. (*emphasis added*)

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The landlord testified to efforts to find a replacement tenant in the month of December including posting on the landlord's website, an online rental site and an online advertising site which were regularly renewed. The landlord testified the unit remained unoccupied until March 1, 2018.

Considering the evidence provided by the landlord, I am satisfied the landlord made reasonable efforts to mitigate loss.

The landlord is therefore entitled to a monetary award in the amount of \$1,350.00 being rent for the month of December 2017.

Cleaning Expenses

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.

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. In this case, the onus is on the landlord to prove their entitlement to a monetary award.

Section 37(2) of the *Act* requires 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Policy Guideline # 1, Landlord & Tenant – Responsibility for Residential Premises states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard [reasonable health, cleanliness and sanitary standards]

The landlord has applied for reimbursement of cleaning expenses for \$72.45 and submitted an invoice from a cleaner in that amount. The landlord submitted a Condition Inspection Report completed by the landlord after move-out noting the need for cleaning. As well, the landlord's submitted photographs showing the condition of the unit.

I accept the landlord's evidence that the cleaning was necessary and the expense is reasonable in the circumstances. Based on the uncontradicted evidence of the landlord, I accept the landlord is entitled to reimbursement for the cleaning expenses in the amount claimed.

Filing Fee

As the landlord has been successful in this application, I find the landlord is entitled to reimbursement of the filing fee pursuant to Section 72 of the *Act*. I also find the landlord may retain the deposits in partial satisfaction of this claim.

In summary, the landlord is entitled to the following:

Rent – month of December 2017	\$1,350.00
Cleaning expenses	\$72.45
Move-out fee (Agreed by Tenants)	\$50.00
Repairs – fridge (Agreed by Tenants)	\$89.59
- Less Deposits	-\$1,350.00
Monetary Order	\$212.04

Conclusion

I grant a monetary order in the amount of **\$212.04**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 08, 2018

Residential Tenancy Branch