



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 damage to the unit and for money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Application for Dispute Resolution (the Application) was sent to each tenant by way of Canada Post Registered Mail on June 12, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings. In accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed served with the Application on June 17, 2018, five days their registered mailing.

The landlord testified that the evidence was sent to each tenant by way of Canada Post Registered Mail on October 26, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed served with the evidence on October 31, 2018, five days their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit and for damage to the rental unit and for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on September 01, 2016, with a monthly rent of \$1,100.00, due on the first day of each month with a security deposit in the amount of \$550.00 that the landlord currently retains in addition to a \$150.00 deposit for a fob.

The landlord also provided in evidence:

- A copy of a Notice to Vacate Residential Premises dated April 27, 2018, signed by one of the tenants, which includes the tenants' forwarding address and dated April 27, 2018, with an effective date of May 31, 2018;
- A copy of a pre move-out letter from the landlord requesting the tenants to schedule a move-out inspection at some point at the end of their tenancy at 1:00 p.m. on the last day of their tenancy. There is also a list of the landlord's cleaning and repair charges which indicates \$75.00 for fob replacement;
- A copy of an e-mail between the landlord's agent and the building manager who indicates that they had talked with the tenant around 10:00 a.m. in the elevator. The building manager states that the tenant indicated that they were almost done moving and that someone was cleaning the rental unit. The manager writes that he has been to the unit twice since the conversation but no one was there and it appears that the tenants have abandoned the rental unit uncleaned. The manager states that they have tried to call the tenant but could not get hold of him;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection scheduled for June 01, 2018;

- A copy of a move-in condition inspection report signed by the landlord and the tenant on August 11, 2016, which indicates that the rental unit was in satisfactory condition at the beginning of the tenancy;
- A copy of a move-out condition inspection report signed only by the landlord on May 31, 2018, which indicates that the walls in the living room need paint and multiple areas throughout the rental unit require cleaning;
- Various pictures taken from within the rental unit of wall damage, dirt on the floor, dirty dishwasher, dirty fridge with food inside, garbage on the balcony and many other examples of the rental unit needing to be cleaned and repaired;
- A copy of an invoice from Company P. dated June 04, 2018, in the amount of \$661.50 to repair wall damage and holes in the rental unit, to replace a mailbox lock and for removing items and garbage left behind as well as to clean the rental unit;
- Copies of time sheets for the landlord's employees who cleaned the rental unit and removed items/garbage, as well as for time spent painting the rental unit;
- A copy of a tenant ledger for the new occupants of the rental unit showing a \$40.00 rent reduction for June 2018 due to a delayed possession date for cleaning and repairing the rental unit; and
- A copy of a Monetary Order Worksheet detailing the landlord's monetary claim as follows:

Item	Amount
Invoice from Company P.	\$661.50
Rent Ledger New Occupants	40.00
Tenancy Agreement – Not Returned Fob	43.50
Filing Fee for this application	100.00
Requested Monetary Order	\$845.00

The landlord gave undisputed affirmed testimony that this tenancy ended when the tenants gave notice in April 2018 that they were going to move out of the rental unit at the end of May 2018. The landlord submitted that they gave multiple opportunities for the tenants to do a condition inspection, verbally and in writing on the pre-move out letter as well as when posting the notice of final inspection on the door of the rental unit on May 31, 2018. The landlord indicated that the tenants ignored a final notice for a condition inspection to be done on June 01, 2018, and did not return a fob.

The landlord testified that cleaning, repairs and painting had to be completed before they could rent out the rental unit and that they incurred a loss in rent for the following tenancy due to a delayed move-in date.

Analysis

Section 38 of the *Act* indicates that a landlord, upon receiving the tenant's forwarding address, must either repay the security deposit to the tenant or make an application for dispute resolution within 15 days of the tenancy ending. As the tenancy ended on May 31, 2018, and the landlord made their Application on June 06, 2018, I find that the landlord made their Application within 15 days of the tenancy ending pursuant to section 38 of the *Act*.

Section 35 of the *Act* establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report and both the landlord and the tenant must sign the condition report. Section 35 goes on to state that the landlord must offer at least 2 opportunities as prescribed in the regulations and may complete and sign the condition inspection report if the tenant has abandoned the rental unit. Section 36 of the *Act* provides that if the tenant does not participate in the condition inspection on either occasion, the right to the return of their security deposit is extinguished.

I accept the landlord's undisputed testimony and evidence that they offered multiple opportunities for the tenants to complete the condition inspection report including a final notice on the approved form pursuant to the regulations. I accept the landlord's undisputed testimony and evidence that the tenants abandoned the rental unit and I find that the landlord has fulfilled their obligations under section 35 of the *Act*.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the *Act* states that at the end of the tenancy the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the evidence and the undisputed evidence of the landlord, I find that the tenant did not leave rental unit reasonably clean and that there was damage which needed to be repaired. I find that the landlord has provided evidence that they have incurred a loss, have given evidence of the actual amount required to compensate them and that the landlord acted quickly to prepare the rental unit for new occupants, thereby minimizing the loss.

Based on the undisputed affirmed testimony and evidence, I accept the landlord's claim that they suffered a loss in the amount of \$661.50 to clean the rental unit, repair damage, to replace a mailbox lock and to re-paint the rental unit due to the actions and neglect of the tenants.

Based on the undisputed affirmed testimony and evidence, I accept the landlord's claim that they suffered a loss in the amount of \$43.50 for the loss of a fob due it not being returned in violation of the tenancy agreement and that they suffered a loss in the amount of \$40.00 for a one day rent reduction due to the actions of the tenants in violation of section 37 of the *Act*.

Although the landlord indicated a loss in the amount of approximately \$200.00 for storage, they did not provide evidence of this loss or put it on the Monetary Order Worksheet. For this reason I dismiss this claim, without leave to reapply.

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. Therefore, I grant the landlord a monetary award in the amount of \$745.00 for damage to the rental unit and compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest

is payable over this period. As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damages under the *Act*, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
Invoice from Company P. - Repair, cleaning and painting	\$661.50
Rent Ledger New Occupants -Loss of Rent	40.00
Tenancy Agreement – Not Returned Fob	43.50
Less Security Deposit	-550.00
Filing Fee for this Application	100.00
Total Monetary Order =	\$295.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: December 05, 2018

Residential Tenancy Branch