



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 or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:26 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served the notice of dispute resolution packages by registered mail on September 09, 2018. The landlord entered into evidence the Canada Post registered mail receipts containing the tracking numbers for all three packages. I find that the tenants were deemed served with these packages on September 14, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Application Amendments

During the hearing, the landlord testified that in addition to the monetary claims set out in the landlord's application for dispute resolution, which totalled \$3,083.00 the landlord testified that she is also seeking to add monetary claims for:

- unpaid utilities in the amount of \$917.13;
- rental rebate to new tenant for ongoing flea problem, in the amount of \$1,175.00; and
- administrative costs incurred preparing for this hearing including photocopying charges and mailing fees totalling \$173.01.

Section 4.2 of the Residential Tenancy Rules of Procedure (the "Rules") state that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the landlord's claim for the above listed items could not have been reasonably anticipated by the tenants. The landlord's dispute resolution application claims the cost of the treatment of the flea problem, it is not reasonable to assume that the tenants would anticipate that the flea treatment would be unsuccessful and that this would result in the landlord suffering further losses with the current tenant. I find that the utility charges are not directly related to any of the landlord's other claims and it is not reasonable for the tenant to have anticipated the landlord's claim. I therefore deny the tenant's application to amend her application to include the first two listed items. I note that the landlord is at liberty to reapply to have these claims heard.

I also note that the dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in or preparing for the dispute resolution process. I decline to amend the application for administrative costs as they are not recoverable.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, 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 landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began in February of 2016 and ended on August 15, 2018. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$200.00 were paid by the tenants to the landlord which the landlord has retained. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 25, 2018 the tenants sent her an e-mail which gave her notice of their intention to vacate the subject rental property on August 1, 2018. The landlord testified that through e-mail, she and the tenants agreed that the tenants would stay at the subject rental property until August 15, 2018 and that they would only pay ½ the rent for August 2018. The landlord testified that the tenants paid her ½ rent for the month of August 2018. The landlord testified that she accepted the loss of ½ rent in August 2018 and planned to use the last two weeks of August 2018 to re-paint the unit and get it ready to be re-rented for September 1, 2018.

The landlord testified that the tenants provided her with their forwarding address via e-mail on August 2, 2018. The e-mails between the landlord and the tenants from July 25,

2018- August 24, 2018 confirming the landlord's testimony were entered into evidence. The landlord applied for dispute resolution on August 30, 2018.

The landlord testified to the following facts. The landlord and the tenants completed a move in inspection report on February 24, 2016 and a copy was provided to the tenant. The move in inspection report was entered into evidence. The landlord testified that via e-mail she and the tenants agreed to complete the move out condition inspection report on August 15th but that the tenants did not attend. The landlord entered into evidence e-mails showing same. The landlord testified that she completed the move out inspection report alone and sent the tenant a copy of the report. The move out condition inspection report was entered into evidence.

The landlord testified to the following facts. The tenants left the subject rental property in a filthy condition. The tenants left the subject rental property full of abandoned possessions including broken planters, bins of overflowing garbage, sleeping bags, an air mattress, a headboard, an organ and an assortment of other items. The landlord entered photographs showing same into evidence. The landlord testified that during the move out condition inspection report she did notice fleas but that the cleaning company she hired to clean the subject rental property refused to complete the work until a pest company dealt with the flea problem. The landlord testified that the subject rental property did not have a flea problem when the tenants moved in and that the tenants never informed her of the flea problem.

The landlord testified that she hired a pest control company to deal with the flea problem. The landlord entered into evidence a receipt from a pest control company in the amount of \$376.95. The landlord testified that the flea removal protocol given to the landlord by the pest control company required her to vacuum the subject rental property every two days to keep the fleas from going dormant so that the flea treatment would be effective.

The landlord entered into evidence a log of each time she attended at the subject rental property to vacuum, and the duration of her vacuuming. The log stated that from August 28, 2018 to October 9, 2018, the landlord vacuumed the subject rental property on 19 occasions for a total of 20 hours. The landlord is seeking reimbursement for her time at a rate of \$20.00 per hour for a total of \$400.00. The landlord's application discloses a claim for vacuuming in the amount of \$60.00. The landlord testified that after she submitted her application, the necessity for vacuuming continued as the fleas had not

yet been eradicated. The landlord sought to amend her application to increase her monetary claim for vacuuming.

The landlord testified that after the pest control company treated the flea problem the cleaning company returned and cleaned the subject rental property. The landlord entered into evidence a receipt from the cleaning company in the amount of \$511.87. The landlord testified that the cleaning company did not do a good job and that she attended at the property and cleaned it for approximately three hours. This cleaning included power washing the deck which was left dirty and removing animal hair from air filters. The landlord is seeking reimbursement for her time at a rate of \$20.00 per hour for a total of \$60.00. The landlord is also seeking to recover the cost of the cleaning supplies she used in the amount of \$50.00. The landlord testified that she did not buy cleaning supplies specifically for cleaning the subject rental property but used product she already had in her home.

The landlord's application did not include a monetary claim for cleaning fees, but did include a \$50.00 claim for cleaning supplies. The landlord testified that the cleaning company was not able to attend at the subject rental property until after she filed for dispute resolution because of the flea problem. The landlord sought to amend her application to increase her monetary claim for cleaning related costs.

The landlord testified that she made two trips to the dump to dispose of the materials left behind by the tenants. The landlord entered into evidence two receipts from a waste disposal company in the amount of \$56.70 and \$40.00. The landlord testified that over a period of two days she spent five hours collecting the items from the subject rental property and taking them to the dump. The landlord is seeking reimbursement for her time at a rate of \$100.00 per hour for a total of \$500.00.

The landlord testified that when she agreed to allow the tenants to move out on August 15, 2018, she hoped to rent out the subject rental property for September 1, 2018; however, the flea infestation and condition of the subject rental property rendered that impossible. The landlord testified that the pest control company did their final inspection on October 9, 2018 and found that the subject rental property no longer had a flea problem. The landlord testified that she was only able to make the necessary repairs and have the subject rental property cleaned after that date as the cleaners etc would otherwise have been bitten by fleas. The landlord testified that the required cleaning, painting and repairs were completed by approximately October 25, 2018 at which time she hired a property management company to find a new tenant.

The landlord testified that the property management company immediately started to look for a tenant for November 1, 2018; however, they were unable to do so on such short notice. The landlord testified that a new tenant was found for December 1, 2018 at a rental rate of \$2,350.00 per month. The landlord testified that in November 2018, after the property management company took over, the property management company found that the property still had fleas and that the fleas have been an ongoing issue. The landlord entered into evidence a letter from her property management company dated December 6, 2018, confirming the landlord's above testimony.

The landlord is seeking \$2,000.00 per month for the months of September- November 2018 during which she was unable to rent out the subject rental property. The landlord's original application only disclosed a claim for loss of rent for the month of September 2018. The landlord testified that at the time she filed her claim she did not know how long the subject rental property would remain unrented. The landlord testified that she is seeking a rate higher than the rent paid by the tenants as she expected to be able to increase the rent she received at the subject rental property from September 2018 onwards by 9-10 %. The landlord testified that she has had to provide the current tenants with a rental rebate for December 2018 because of the flea problem. The landlord entered a letter from the property management company dated December 20, 2018 stating same into evidence.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord undisputed testimony and photographic evidence, I find that the tenant's left the subject rental property dirty, with personal possessions that required disposal, and with a flea problem. Due to the above, I find that the tenants breached section 37 of the *Act*. As such, I find that the tenants are responsible for the costs incurred by the landlord as a result of their breach, subject to the landlord's duty to mitigate.

I find that the tenants are responsible for the garbage disposal fees incurred by the landlord in the amount of \$96.70. I accept the landlord's testimony that she spent five hours removing the garbage and the tenant's abandoned possessions from the subject rental property; however, I find the rate of \$100.00 per hour claimed by the landlord to be excessive. I find that the landlord is entitled to be compensated at a rate of \$20.00 per hour, for a total of \$100.00.

I find that the tenants are responsible for the flea problem and the charge from the pest control company in the amount of \$376.95 to eradicate the fleas. I accept the landlord's testimony and evidence that as part of the flea control protocol she was required to frequently vacuum the subject rental property and that she spent 20 hours doing so. The landlord is seeking reimbursement for her time at the rate of \$20.00 per hour.

While the landlord's original application only claimed \$60.00 for vacuuming fees, I find that pursuant to section 4.2 of the Rules, it could be reasonably anticipated that the claim for time spent vacuuming would increase as the flea treatment protocol continued. Pursuant to section 64 of the *Act*, I amend the landlord's application to increase her monetary claim for vacuuming from \$60.00 to \$400.00. I find that the landlord is entitled to recover \$400.00 from the tenant for 20 hours of vacuuming.

In the landlord's original application, she claimed \$50.00 for cleaning supplies. At the hearing the landlord testified that she is also seeking to recover the cost of hiring professional cleaners in the amount of \$511.87 as well as reimbursement for the three hours she spent cleaning the property at a rate of \$20.00 per hour. I find that since the landlord originally claimed reimbursement for cleaning supplies, pursuant to section 4.2 of the Rules, it could reasonably be anticipated that the landlord would also claim reimbursement for the actual cleaning. Pursuant to section 64 of the *Act*, I amend the landlord's application to include a monetary claim for cleaning in the amount of \$571.87

I find that the tenants left the subject rental property dirty and are responsible for the cost of the professional cleaners in the amount of \$511.87 as well as the landlord's time spent cleaning, in the amount of \$60.00. I find that the landlord has not proved the monetary value of the cleaning supplies she used to clean the subject rental property, as such I dismiss her claim for cleaning supplies.

Residential Policy Guideline #3 states that if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The landlord's original application only disclosed a claim for loss of September's 2018's rent. I find that, pursuant to section 4.2 of the Rules, it could reasonably be anticipated by the tenant that the landlord would also seek recovery for loss of rent until the unit was re-rented. Pursuant to section 64 of the *Act*, I amend the landlord's application to include a monetary claim for October and November 2018's rent in the amount of \$2,000.00 per month.

I accept the landlord's testimony that the property management company she hired on October 25, 2018 attempted to find a tenant for November 1, 2018 but were unable to do so in the six days before November 1, 2018. I find that the flea problem caused by the tenants delayed the marketing of the subject rental unit October 25, 2018. I therefore find that the tenants are responsible for September and October rent in the amount of \$1,800.00 per month. I decline to award the requested \$2,000.00 per month as the tenants are not responsible for an increase in the rental rate hoped to be achieved by the landlord.

Policy Guideline #3 states that the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

The management company listed the subject rental property for \$550.00 per month higher than that paid by the tenants. I find that in increasing the rental rate from \$1,800.00 per month to \$2,350.00 per month, the landlord failed to mitigate her damages for the month of November 2018. It is possible that the property management company would have been able to find a new tenant for the subject rental property for November 1, 2018 if the property has been marketed at the tenant's rental rate of

\$1,800.00. Due to the landlord's failure to mitigate her damages, I decrease the award for November 2018 by \$550.00 for a total of \$1,250.00.

Since the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 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 or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security and pet damage deposits in the amount of \$1,050.00 in part satisfaction of her monetary claim against the tenant.

Conclusion

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

Item	Amount
Garbage dump fees	\$96.70
Landlord labour-garbage removal	\$100.00
Landlord labour-cleaning	\$60.00
Professional cleaning	\$511.87

Landlord labour- vacuuming	\$400.00
Pest control	\$376.95
Rent September – November 2018	\$4,850.00
Filing fee	\$100.00
Less security and pet damage deposits	-\$1,050.00
TOTAL	\$5,445.52

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: January 09, 2019

Residential Tenancy Branch