



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-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 tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's agent ("the landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Issue(s) 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 tenants' security deposit, 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2016 and ended on September 30, 2018. This was a fixed term tenancy with an end date of September 30, 2018. Monthly rent in the amount of \$3,100.00 was payable on the first day of each month. A security deposit of \$3,000.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. A move in condition inspection report was completed by the landlord and tenant K.C. on September 27, 2016. A move out condition inspection report was completed by the landlord and tenant S.M. on September 30, 2018. The move out condition inspection report states that tenant S.M. agreed to the condition of the property stated on the move out inspection report, but did not agree to the alleged rent owing. The move in and move out condition inspection reports were entered into evidence.

Both parties agreed on the following facts. On July 31, 2018 the landlord's agent texted the tenants and informed them that the owner would like to take possession of the house at the end of the lease term, that being September 30, 2018. The tenants replied via text message that under the *Act*, they are entitled to receive one month's free rent if the landlord is providing them with two months' notice to end tenancy for landlord's use of property. The landlord's responding text states that the tenants are not entitled to one months' free rent. Text messages from July 31- August 13, 2018 between the landlord and the tenants were entered into evidence.

The landlord testified that he initially believed that since the end of this fixed term tenancy was September 30, 2018, that the tenants were not entitled to one months' free rent. After some further research he learned that if he issued the tenants a two month notice to end tenancy for landlord's use of property that the tenants would be entitled to one months' free rent. The landlord testified that once he explained this to the owner, she instructed him not to issue the tenants with a two month notice to end tenancy for landlord's use.

Both parties agree to the following facts. The landlord texted the tenants on August 11, 2018 and informed them that the owner would not be taking back possession of the subject rental property and that the tenancy would continue.

The tenants testified that by the time the landlord told them that the tenancy would continue, they had all made new housing arrangements. The tenants testified that all of the communication between themselves and the landlord was done via text message and that they considered the text message stating that the landlord would be taking back possession of her house to be a valid two month notice to end tenancy for landlord's use of property.

The landlord testified that a valid two month notice to end tenancy for landlord's use of property was never served on the tenants and the tenants are therefore not entitled to one months' free rent.

Both parties agreed to the following facts. The tenants moved out of the subject rental property on September 30, 2018 and did not pay rent for September 2018. The landlord filed for dispute resolution on October 2, 2018.

The landlord testified that the window coverings and window sills at the subject rental property were not clean when the tenants moved out. The move in condition inspection report states that the windows/covering/screens in the following rooms were dirty or dusty: kitchen, living room, dining room, and bedroom 3/3. The move out condition inspection report states that the windows/covering/screens in the following rooms were dirty or dusty: kitchen, living room, dining room, main bathroom, master bathroom, and all three bedrooms.

The landlord testified that the owner spent over 30 hours getting the subject rental property ready for habitation and is claiming \$300.00 for the time the owner spent cleaning the subject rental property. No breakdown of how this amount was calculated was entered into evidence nor any breakdown as to what the owner spent 30 plus hours doing.

The tenants testified that they subject rental property was cleaned by themselves and a professional cleaner when they moved out. The tenants entered into evidence a receipt for a "residential move out clean". The tenants testified that the windows and window coverings were dirty when they moved in.

The landlord testified that the tenants scratched the walls in a few places in the house including a bedroom and is claiming \$150.00 for wall touch ups completed by the owner. No breakdown of how this sum was calculated or any receipts were entered into evidence. The move in inspection report states that there are scratches, dings, or small holes on the walls and trim in the following rooms: entry, living room, main bathroom, master bathroom, bedroom 1/3 and bedroom 3/3. The move out inspection report states that there are scratches, dings, or small holes on the walls and trim in the following rooms: living room, and bedroom 3/3.

The tenants testified that any marks left on the walls and trim are minor and constitute reasonable wear and tear.

The landlord testified that the laundry sink drain was clogged when the tenants moved out. The landlord testified that he is seeking to recover \$150.00 from the tenants as that is the usual minimum cost of a plumber to attend at a residence. The landlord testified that the landlord's partner unclogged the drain and did not call a plumber.

The tenants agreed that the laundry sink drained slowly at the end of the tenancy but did not believe the \$150.00 claim to be reasonable as no plumber was actually called.

The landlord testified that the tenants were required to steam clean the carpets at the end of the tenancy and that the tenants failed to do so. The landlord testified that the carpets were disgusting at the end of the tenancy and were covered in dog hair. The landlord testified that he is claiming \$100.00 for the cost of cleaning the carpets. The landlord testified that the owner rented a carpet cleaning machine and cleaned the carpet herself. No receipt was entered into evidence.

The tenants testified that they rented a steam cleaner and cleaned the carpets. A steam cleaning rental receipt dated September 26, 2018 was entered into evidence. Both parties agreed that the carpet was in poor shape when the tenants moved in.

Analysis

Section 51 of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 49(7) of the *Act* states that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I find that the landlord did not provide the tenants with a notice to end tenancy that met the form and content requirements of section 52 of the *Act*. A text message is not a valid notice to end tenancy. The triggering event for the compensation provisions in section 51 of the *Act*, is service on the tenants of a two month notice to end tenancy. I find that the tenants did not receive a valid two month notice and so are not entitled to the compensation provisions of section 51 of the *Act*. I therefore find that the tenants owe the landlord \$3,100.00 for September 2018's rent.

Monetary Claim

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.

I find that the landlord has failed to prove the amount of or value of the damage or loss for cleaning, wall touch ups, plumber costs and carpet cleaning as no receipts for expenses were entered into evidence and no records were entered into evidence detailing the time and actions of the landlord for any of the alleged repairs and or cleaning.

In addition, based on the evidence submitted by the tenants and their testimony, I find that the subject rental property was professionally cleaned at the end of the tenancy and the landlord failed to prove that

additional cleaning was required to return the subject rental property to the same condition as it was when the tenants moved in.

I find that the tenants steam cleaned the carpets at the end of the tenancy and that the landlord failed to prove that the carpets required further cleaning.

I find that the landlord failed to prove that any scratches on the wall were anything other than reasonable wear and tear.

I find that a plumber was not called to fix the drain and the landlord has failed to prove any loss for the slow flowing drain.

Based on the above, I dismiss the landlord's monetary claims for cleaning, wall touch ups, plumber costs and carpet cleaning,

Security Deposit

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 deposit 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 deposit in the amount of \$3,000.00 in part satisfaction of the monetary claim against the tenants.

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

Conclusion

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

Item	Amount
September rent	\$3,100.00

Filing Fee	\$100.00
Less security deposit	-\$3,000.00
TOTAL	\$200.00

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 29, 2019

Residential Tenancy Branch