



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were served the notice of dispute resolution package and supporting evidence via registered mail on February 2, 2019. The landlord provided Canada Post tracking numbers, which are reproduced on the cover of this decision. The tenants confirmed receipt of the notice of dispute resolution package via registered mail. I find that the tenants were deemed served with this package on February 7, 2019, five days after the landlord mailed it, in accordance with sections 89 and 90 of the Act.

The tenants testified that the landlord was served their evidence package via registered mail on February 12, 2019. The tenants provided Canada Post tracking numbers, which are reproduced on the cover of this decision. The landlord confirmed receipt of the notice of dispute resolution package via registered mail. I find that the landlord was

deemed served with this package on February 17, 2019, five days after the tenants mailed it, in accordance with sections 88 and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and
- recover his filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a fixed-term tenancy agreement on June 1, 2018 which was set to expire on January 1, 2019. Monthly rent was \$2,000.00. The tenants paid a security deposit of \$1,000.00 to the landlord, which they continue to hold. The rental unit and all its appliances were brand new when rented to the tenants.

A move-in inspection report was conducted June 1, 2018. A move-out inspection report was conducted on January 1, 2019. All parties were present at both inspections, and all parties signed copies of both reports. The tenants wrote on the move-out inspection report that they do not agree with the damages complaints identified by the landlord.

Tenants' Notice to End Tenancy

On December 1, 2018, the tenants gave written notice (the "**Notice**") to the landlord that they wished to end the tenancy on January 1, 2019. The Notice was left in the landlord's mailbox. The tenants also sent the landlord a text message on December 1, 2018, stating that they wished to terminate the tenancy in 30 days. The landlord replied that same day "Ok perfect".

The copies of the Notice uploaded into evidence by the landlord and the tenants are not signed by either tenant.

The landlord argues that the Notice is invalid, because the tenants failed to sign it, as required by sections 45 and 52 of the Act, and because the tenants were required to provide one month's notice (that is, send the notice by November 30, 2018), which they failed to do.

The tenants concede that they were one day late in delivering the notice to the landlord. However, they insist that the Notice they left with the landlord was signed, and that the copy of the Notice uploaded by the landlord is, in fact, a copy of the Notice that they provided to the landlord digitally, as part of their evidence for this hearing. They allege that the copy left in the mailbox was signed.

The landlord claims that he is entitled to the equivalent of one month's rent for the tenant's breach of the tenancy agreement (\$2,000.00). The tenants argue that an award of one month's rent to the landlord is excessive for being one day late in serving the Notice.

Damage to Rental Unit

The landlord claims damage of \$3,865.74 as follows:

Cleaning of unit (\$35/hour x 10 hours)	\$350.00
Painting walls in unit	\$1,942.50
Repairs to damaged appliances (quote)	\$768.45
Cost of obtaining quote	\$196.88
New kitchen sink	\$289.00
Cost of printing three sets of photos of damage for this proceeding	\$318.91
Total	\$3,865.74

The landlord submitted an estimate from a cleaning company for work which needed to be done. This work included the removal of an odour throughout the suite.

The landlord also alleges that the tenants left the rental unit in a state that was unfit for rent. He expended \$3,865.74 in cleaning, repairing, and documenting damage they allege was caused by the tenants. The landlord submitted into evidence hundreds photographs of the rental unit documenting the damage. The damage includes:

- Dent to the refrigerator door;
- Scuff marks and small scrape on the wall throughout the house;
- Scratches on the bottom of the kitchen sink;
- Scratches on the stovetop and stove controls;
- Discoloration on the oven door seal;
- Odour throughout the rental unit;
- Grease and grime on various surfaces throughout the rental unit;
- Dust, dirt, fingerprints, and smudges on various surfaces

The landlord testified that repainting was necessary due to the marks on the walls. The landlord drew my attention to a photograph showing what he alleged were nail holes that the tenant had filled in and painted over, which required repainting. The tenants testified that these were not nail holes, but rather marks left by removal of picture hook which the landlord had instructed the tenants to use rather than nails. The removal lifted a portion of the paint on the wall off. The tenants testified that they repainted the portion of the wall to fix this issue.

The tenants argue that the damage alleged by the landlord is ordinary wear and tear. They testified that they cleaned the rental unit thoroughly prior to moving out, and that the “grease” marks on various surfaces are reflections of light in the photographs.

The tenants have uploaded a full recording of the move out inspection report which show the parties (accompanied by an RCMP officer) walking through the rental property. The recording was broken down across 10 separate video files, and I estimate the length to be over an hour. The parties did not direct me to view any particular portion of the walkthrough videos, or make reference to any particular part, so I only reviewed a brief portion (selected at random) where the parties view an electric fireplace which the landlord alleges has smudges and finger prints on it, and grease marks on the wall below it. It is not possible to see these fingerprints or grease marks in the video.

The landlord testified that the rental unit was not in a rentable condition after the tenants moved out. The landlord testified that he was unable to re-let the rental unit until March 15, 2018. The tenants submitted two undated screenshots of Craigslist advertisements which list the rental unit for rent. One of these ads says the rental unit is available as of January 15, 2019.

Analysis

Damages to Rental Unit

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear;

The standard of cleanliness is not that of perfection, but rather that of reasonableness.

Likewise, the rental unit need not be in pristine condition, rather, reasonable wear and tear is permitted. Residential Tenancy Policy Guideline 1 states:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant. [emphasis added]

Policy Guideline 1 continues:

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes: Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

PAINTING: The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy

to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

MAJOR APPLIANCES:

3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

[emphasis added throughout]

I have reviewed the photographs submitted into evidence of both parties. I find that the standard of cleanliness the tenants left the rental unit is, with a few exceptions, reasonable. In this case, I find that the landlord is applying a “white glove” test of cleanliness, and expecting perfection, which is beyond the standard of reasonableness set out in the Act.

I find that the tenants failed to clean scuff marks off the walls of the unit, and finger prints off of the fireplace, as required by Policy Guideline 1.

Additionally, on the basis of its inclusion on a quote supplied by a third party, I find that there was an odour in the suite that required cleaning to remove. No evidence was given for as the source of the odour. As the odour was not noted on the move-in inspection report, I find that the odour was caused by the tenants at some point during their tenancy.

Accordingly, I order, pursuant to section 7 of the Act, that the tenants pay half of the cost of cleaning the rental unit (\$175.00), representing the cost for removing the odour and cleaning the scuff marks and fingerprints off the walls and fireplace.

The landlord has failed to prove that the any of the damage caused to the appliances was due to the deliberate actions or neglect of the tenants, as required by Policy Guideline 1. The damage to the sink, refrigerator, stove, and oven all appear to be the result of normal wear and tear. I do not find that the tenants are responsible for any part of the costs of repairing or replacing these appliances, or the cost associated with obtaining an estimate for their replacement.

I find that the landlord has failed to demonstrate that any painting was necessary to because of damage caused by the tenants (scuffs and scratches) beyond ordinary wear and tear.

The tenants used adhesive hooks to hang pictures, in accordance with the landlord's requirement. Their removal caused damage. The tenants were not obligated to repair this damage (per Policy Guideline 1), but they attempted to nonetheless. Their efforts did not create any additional cost for the landlord that he would not have had to bear had they not attempted to repair the damage (that is, the landlord would have had to paint over the damage in any event). Accordingly, I find that the tenants are not responsible for the cost of repainting any part of the rental unit.

The landlords incurred significant costs (\$318.91) in having multiple copies of their photographic evidence made (one for the Residential Tenancy Branch and one for each tenant). This cost is not reasonable. Parties are able to upload the photographic evidence to the RTB's website, and may provide evidence to an opposing party digitally (as the tenants did). I should note that, in the portion of the video that I reviewed the landlord appears to be taking pictures of the damage with a smart phone. I see no reason why these photos could not have been provided in digital form to the tenants and the branch, thus avoiding this significant cost. Per section 7(2) of the Act, a landlord has an obligation to minimize damage or loss, which he could have done had he provided digital copies of the photos to the tenants.

As such, I decline to order that the tenants repay the landlord any amount for the printing of photographs.

In summary, I find that the tenants must pay the landlord \$175.00 in cleaning costs.

Effectiveness of Tenant's Notice

Section 45 of the Act requires that a tenant's notice to end tenancy must comply with section 52 of the Act, which requires that "in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice".

The parties disagree as to whether the Notice was signed. Per Rule of Procedure 6.6, the tenants have the onus of proving that the Notice was signed, as they are the ones

claiming it was signed. I find that they have failed to discharge this onus, and find that the Notice was not signed.

However, section 68 of the Act states:

Director's orders: notice to end tenancy

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

The purpose of a signature on a document is to confirm the document's authenticity. I find that the landlord should have known that the Notice was authentic (and actually sent by the tenants), as the landlord received a text message from the tenants indicating that the Notice would be sent.

I order the Notice be amended so as to include the signature of both tenants.

Timing of Service of Notice

At the hearing, the tenants conceded that the Notice was served late so as to not be effective to end the tenancy on December 31, 2019.

Section 53 of the Act states:

Incorrect effective dates automatically changed

53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

[...]

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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, the

effective date is deemed to be 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

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

[emphasis added]

The Notice provided the effective date (the date the tenants would vacate), as January 1, 2019. Rent is payable on the first of each month, under the tenancy agreement. Accordingly, I find that the effective date is deemed to be January 31, 2019 (the day before the next day that rent after the required notice period of one month).

Damages Resulting from Breach

The tenants did not remain in the rental unit until January 31, 2019. They vacated the property on December 31, 2018. By vacating the rental unit early, and failing to pay rent for January 2019, the tenants breached the Act.

Accordingly, I find that the landlord is entitled to damages in compensation of this breach, subject to his duty to minimize damages, as per section 7(2) of the Act.

Policy Guideline 5 states:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

[emphasis added]

I find that the landlord was not obligated to attempt to make attempts to re-let the rental unit for January, 2019 while the tenants still occupied it. The Notice had a deemed effective date of January 31, 2019, and the tenants were entitled to occupy it until then.

Once the tenants vacated the rental unit (on December 31, 2019), the landlord has an obligation to re-let the rental unit as soon as is practical. The landlord posted on Craigslist offering the rental unit for rent as of January 15, 2019. I find that this is both reasonable and practicable.

I find that the landlord successfully attempted to minimize his damages. As he was unable to rent the rental unit out until March 15, 2019, I find that the tenants' breach of the Act caused the landlord to lose the opportunity to earn rent for the month of January, 2019.

I do not find the tenants' argument that it is disproportionate to an award of one month's rent for the delay of one day in serving the Notice to be persuasive. There is no basis in the Act for a reduction of damages due to the length of a delay in serving a Notice. Whether the delay was one day, or twenty, the tenants ultimately breached the Act, and the landlord is entitled to be compensated.

Accordingly, I find that the tenants must pay the landlord the equivalent of one month's rent (\$2,000.00).

As the landlord was partially successful in his claim, I order that the tenants repay to the landlord his filing fee (\$100.00).

The landlord applied to retain the security deposit and credit it against any monetary award I might make. Pursuant to section 72(2), I order that the landlord may retain the security deposit (\$1,000.00) in partial satisfaction of the monetary awards I have made in this decision.

Conclusion

The landlord may retain the security deposit in partial satisfaction of the monetary awards I have made in this decision.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$1,275.00 as follows:

50% of cost claimed for cleaning	\$175.00
January 2019 rent	\$2,000.00
Filing Fee	\$100.00
Security deposit credit	-\$1,000.00
Total	\$1,275.00

Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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 13, 2019

Residential Tenancy Branch