



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S

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 and compensation, pursuant to section 67; and
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 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 she served each tenant with her application for dispute resolution via registered mail on September 20, 2019. The landlord provided the Canada Post tracking numbers to evidence the above mailings. The tracking numbers are located on the cover page of this decision.

The landlord testified that she served each tenant with her amendment package via registered mail on December 9, 2019. The landlord provided the Canada Post tracking numbers to evidence the above mailings. The tracking numbers are located on the cover page of this decision.

I find that the tenants were deemed served with the landlord's application for dispute resolution and amendment in accordance with section 88, 89 and 90 of the *Act*.

Issues 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 and compensation, 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*?

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 the following undisputed testimony. This tenancy began on May 1, 2019 and ended on August 31, 2019. This was originally a fixed term tenancy set to end on May 1, 2020. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 24, 2019 the tenants provided her with written notice to end their tenancy on August 31, 2019.

Water

The landlord testified the tenant texted her on June 21, 2019 and informed her that she purchased a pool with a pump and that she would pay the water bill for the extra consumption. The landlord testified that she agreed. Text messages evidencing same were entered into evidence. The landlord testified that water was otherwise included in the rent. The landlord testified that the summer water bill was double the normal amount

and entered into evidence a water bill from May 1 to August 31, 2019 in the amount of \$437.80. The landlord testified that she is seeking 25% of the water bill in the amount of \$109.45.

Flooring

The landlord entered into evidence a move in and move out condition inspection report signed by both parties on both the move in and move out of the subject rental property. The report states that the tenants agreed with the contents of the report.

The landlord testified that when she attended at the subject rental property on August 31, 2019 all the doors and windows in the subject rental property were open and it appeared as though the tenants were airing it out. The landlord testified that after completing the move out inspection report she closed the doors and windows and that when she returned the following day, the smell of cat urine was overwhelming. The landlord testified that the tenants aired out the subject rental property to hide the damage their pets did to the subject rental property. The tenant testified that cat urine soaked through the flooring and into the sub flooring in two bedrooms and the living room requiring the subfloors and vinyl flooring to be replaced. The landlord testified that in an effort to save money she and her family completed the repairs themselves and rented tools to do so.

The landlord testified that the move out condition inspection report does not mention the urine smell because the subject rental property was well ventilated at the time the move out inspection report was conducted.

The landlord entered into evidence the following receipts:

- A receipt for subflooring and glue: \$1,253.74;
- A receipt for screw gun and nails: \$205.86; and
- A receipt vinyl flooring: \$1,897.06.

The landlord testified that she purchased the house in 2018 and does not know how old the flooring is and so is only claiming reimbursement of 40% of the above costs as follows:

- A receipt for subflooring and glue: \$501.50;
- A receipt for screw gun and nails: \$82.34; and
- A receipt vinyl flooring: \$758.82.

Pest Control

The landlord testified that prior to renting the subject rental property to the tenants she resided in the subject rental property and had no issues with pests. The landlord testified that the tenants first informed her of an ant problem on June 22, 2019 and she had an exterminator attend at the subject rental property on that day. At that time the exterminator found evidence of ants, fleas and bedbugs. The subject rental property was treated at that time and the landlord entered into evidence an invoice in the amount of \$136.50.

The landlord testified that between September 1, 2019 and October 9, 2019 she treated the subject rental property for bedbugs and fleas with bedbug and flea chemicals and natural treatments which required a significant amount of vacuuming. The landlord testified that she needed to wear disposable coveralls and booties when she vacuumed to ensure she did not get bitten. The landlord entered into evidence the following receipts which she is seeking to recover from the tenants:

1. Coveralls and booties (3 pairs): \$24.35;
2. Coveralls and booties (6 pairs): \$51.62;
3. Coveralls and booties (1 pair): \$8.60;
4. Coveralls and booties (4 pairs): \$32.03; and
5. Coveralls and booties (2 pairs): \$16.02;
6. Flea treatment: \$32.46;
7. Flea treatment: \$69.44;
8. Flea treatment \$69.44;
9. Vacuum bags x 2: \$49.26;
10. Shop vacuum bag: \$25.75;
11. Show guards and coveralls: \$15.09;
12. Shot vacuum air filter: \$105.25; and
13. Bedbug treatment: \$17.90.

The landlord testified that the subject rental property was insect free on October 9, 2019. The landlord testified that the tenants brought the pests into the subject rental property and so should have to pay for their removal.

Insurance Change

The landlord testified that after the tenant moved out, she had to change her insurance at the subject rental property as it was standing vacant and a vacant property requires different insurance than a tenanted property. The landlord testified that this change cost her \$54.00. A receipt for same was entered into evidence. The landlord is seeking to be reimbursed by the tenants for this cost as the subject rental property was left vacant

because of the pests the tenants brought in. The landlord testified that she could not re-rent the subject rental property in the condition the tenants left it.

Registered Mail Costs

The landlord testified that the tenant made a previous application for arbitration with the Residential Tenancy Branch and she incurred registered mail costs in that dispute process. A receipt in the amount of \$29.06 was entered into evidence. The landlord is seeking reimbursement for this expense.

Cleaning

The landlord testified that the subject rental property was not cleaned when the tenants moved out. The move in and move out condition inspection report confirms the landlord's testimony. The landlord testified that she spent many hours cleaning the subject rental property. The landlord did not make a claim for her labour but is claiming the cost of the cleaning supplies purchased to clean the subject rental property. The landlord entered into evidence two receipts in the amount of \$17.64 and \$3.94.

Rent and Loss of Rental Income

The landlord testified that the tenant did not pay August 2019's rent in the amount of 1,700.00. The landlord testified that in November of 2019 she decided to move back into the subject rental property and not to rent it out again. The landlord testified that due to the insect problem at the subject rental property she was not able to rent it out after the tenants moved out and so is claiming loss of rental income for September and October 2019 in the amount of \$3,400.00. The landlord testified that she did not advertise the subject rental property for rent.

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. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the landlord's claim fails.

Water

Based on the tenancy agreement entered into evidence I find that water was included in the monthly rent; however, I also find that the tenant purchased a pool requiring extraordinary water consumption and offered to pay the landlord for that extra consumption.

The landlord entered into evidence a water bill for the months of May to August 2019 but did not enter into evidence a comparable bill for the same period showing what the water bill was without the pool. I find that the landlord has not proven the value of her loss, the landlord has not shown by what amount her water bill went up due to the pool.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proven that the tenant installed a pool and offered to pay for the extra water consumed. While the landlord has not proven the value of her loss, I find that she has proven that a loss occurred and is therefore entitled to nominal damages in the amount of \$100.00.

Flooring

Section 21 of the Residential Tenancy Act Residential Tenancy Regulation states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move out condition inspection report does not mention the smell of cat urine. The landlord testified that this was because the tenants purposefully aired the subject rental property out before the report was conducted. Based on the landlord's undisputed testimony, I find that the tenants purposefully aired out the subject rental property

immediately prior to the completion of the move out condition inspection report to hide damages caused by their pets. I accept the landlord's testimony and find that this constitutes a preponderance of evidence to the contrary of the move out condition inspection report.

Residential Tenancy Branch Policy Guideline #40 (PG #40) sets out the useful life for building elements. Residential Tenancy Branch Policy Guideline #40 states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The landlord testified that she did not know the age of the flooring. I find that without knowing the age of the flooring, it is not possible for me to complete a useful life calculation to determine what amount of the flooring costs the landlord is entitled to receive from the tenant. I find that in failing to provide me with the age of the flooring, the landlord has failed to prove the loss or value suffered.

Nonetheless I find that the landlord has proved that a loss was suffered and so is entitled to receive nominal damages in the amount of \$500.00.

Pest Control

Section 32(1) and (2) of the *Act* states:

32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Residential Tenancy Policy Guideline #1 states that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I find that the landlord did not prove that the tenants brought the pests into the subject rental property. While I accept the landlord's evidence that she did not have a pest problem when she lived at the subject rental property immediately before the tenants, this evidence is not enough to prove that through intent or negligence the tenants brought pests into the subject rental property. I find that in the absence of proven negligence or intent of the tenants to introduce pests to the subject rental property, the landlord, pursuant to Residential Tenancy Policy Guideline #1, is responsible for pest control which includes bed bug, ant and flea treatments. I therefore dismiss the landlord's claim for the cost of remediating the insect problem.

Insurance Change

I find that the landlord is not entitled to recover the cost of the change in insurance as she has not proved that the pest problem was caused by the tenants, and it is the pest problem with necessitated the change in insurance.

Registered Mail Costs

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 the dispute resolution process such as the costs for registered mailings. I therefore dismiss the tenants claim for the cost of sending registered mail to the tenants.

Cleaning

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's testimony and the move in and out condition inspection reports, I find that the rental unit required significant cleaning. The landlord submitted into evidence, receipts for cleaning supplies totaling \$21.58. I find that the tenants are responsible for these costs.

Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,700.00 on the first day of each month. Based on the testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$1,700.00 in unpaid rent for August 2019.

Loss of Rental Income

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In this case, the landlord became aware that the tenant intended on ending the fixed term tenancy in July of

2019.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

I find that the landlord did not mitigate her damages as she did not attempt to re-rent the subject rental property at all. I also find that since the landlord did not prove that the tenants caused the pest problems, the landlord is not entitled to recover loss of rental income due to that pest problem.

I therefore dismiss the landlord's claim for loss of rental income.

Filing Fee and Security Deposit

As 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 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit and or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security and pet damage deposits in the amount of \$1,700.00 in part satisfaction of her monetary claim against the tenants.

Conclusion

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

Item	Amount
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Water bill- nominal damages	\$100.00
Flooring bill- nominal damages	\$500.00
Cleaning supplies	\$21.58
August 2019 rent	\$1,700.00
Filing Fee	\$100.00
Less security deposit	-\$850.00
Less pet damage deposit	-\$850.00
TOTAL	\$721.58

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 14, 2020

Residential Tenancy Branch