



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- authorization to retain the tenant's security deposit under Section 38 of the Act;
- a monetary award for compensation for damage or loss under the Act, pursuant section 67 of the Act; and
- authorization to recover the filing fee for this application, pursuant section 72 of the Act.

Although I left the teleconference hearing connection open until 2:40 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M., the tenant did not attend. 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.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) by registered mail on September 23, 24 and October 30 2019 (the tracking numbers are reproduced on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on November 04, 2019.

Preliminary Issue – Amendment of Claim

At the hearing the landlord corrected her mailing address. The only change requested was to change street to avenue. Pursuant to section 64 of the Act I amended the application of the landlord to update the correct address of the landlord.

Issues to be Decided

- Is the landlord entitled to retain the security deposit and receive a monetary award for compensation for damages caused by the tenant?
- Is the landlord entitled to repayment the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

The landlord testified the tenancy agreement and addendum were signed on October 22, 2018, the fixed tenancy started on October 29, 2019 and was supposed to end on October 31, 2019. Monthly rent was \$1,995.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$997.50 was collected and the landlord still holds it in trust.

The landlord testified the cheques for payment of June and July 2019 rent were returned by the bank and provided the letters from the bank. The landlord sent letters to the tenant on June 10 and July 10, 2019 asking for payment of rent. The landlord also testified on or around July 18, 2019 the mother of the tenant confirmed the tenant was still living at the rental unit.

On August 03, 2019 the landlord found the rental unit empty. On August 31, 2019 the landlord e-mailed the tenant asking her to attend the move-out inspection. On September 06, 2019 the landlord sent, via registered mail, the Notice of Final Opportunity to Schedule a Condition Inspection (RTB-22), scheduling the final inspection for September 12, 2019. The move-out inspection happened on that date, and the tenant did not attend. The Condition Inspection Report (RTB-27) was submitted as evidence.

The rental unit was dirty and there were wholes in the wall and scratches on the floor. The landlord paid her son \$200.00 to clean the rental unit. The garage door remote was not returned, and the keys to the storage room and mailbox were missing. The landlord testified she paid \$60.00 to re-key the storage room, \$90.00 to re-key the mailbox and \$1250.00 to replace the garage door remote. The landlord also paid the \$100.00 strata move-out fee.

On August 6 or 7 the landlord advertised the rental unit on Kijiji and on a local website (Castanet), asking for a monthly rent of \$1,995.00. She also advertised with local realtors. On September 30, 2019 the landlord put the rental property on the market for sale and accepted an offer on October 01, 2019. The landlord also testified there was a high vacancy rate and the average price for this rental unit would be \$2,400.00.

The landlord testified she contacted the insurance company of the rental unit around August 15, 2019 and learned the forwarding address of the tenant.

The landlord claims damages as follows:

Cleaning	\$200.00
Strata move-out fee	\$100.00
Garage door remote	\$125.00
Key replacement (mailbox and storage room)	\$150.00
Returned cheques fee (June and July 2019)	\$50.00
Unpaid rent (June and July 2019)	\$3,990.00
Loss of rent (August, September and October 2019)	\$5,985.00
Total	\$10,600.00

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The testimony provided by the landlord during the hearing was cohesive and convincing.

Cleaning

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

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the testimony, I find the tenant did not leave the rental unit reasonably clean and the landlord was required to undertake extensive cleaning at the end of the tenancy.

The landlord affirmed she paid \$200.00 for her son to do the cleaning.

Based on my review of the evidence, I award the landlord \$200.00 in compensation for this loss.

Strata move-out fee

The addendum to the tenancy agreement indicates the tenant agreed to pay the \$100.00 strata move-out fee.

The landlord testified she paid the \$100.00 strata move-out fee because the tenant did not.

Based on my review of the documentary evidence and testimony, I award the landlord \$100.00 in compensation for this loss.

Keys and Garage Door Remote

Residential Tenancy Branch Policy Guideline 1 states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. **The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.**

The Condition Inspection Report indicates the tenant received 2 keys at the start of the tenancy and 1 remote for the garage door. At the end of the tenancy the remote for the garage door was not returned and the landlord only received one key.

The landlord testified she paid \$60.00 to re-key the storage room, \$90 to re-key the mailbox and \$1250.00 to replace the garage door remote. However, the Condition Inspection Report does not indicate the tenant received storage and mail key.

Based on the testimony and documentary evidence provided, I find the landlord did not prove the tenant received the mail and storage keys at the start of the tenancy. I award the landlord \$125.00 in compensation for replacing the garage door remote.

Unpaid rent (June and July 2019)

The signed tenancy agreement indicates monthly rent was \$1,995.00, due on the first day of the month. The addendum to the tenancy agreement indicates the tenant agreed to pay \$25.00 if rent is not paid in the 1st day of the month.

The landlord testified around mid-July she was informed the tenant was still living at the rental unit, and on August 03, 2019 the landlord concluded the property was abandoned.

The letters from the bank indicate the cheques for June and July 2019 were returned.

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 tenant was obligated to pay the monthly rent in the amount of \$1,995.00 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 owe the landlord \$3,990.00 in unpaid rent from the months of June and July 2019, and \$199.50 for pro rata rent for August 01 to 03, 2019 ($1,995.00/30 \times 3$).

I also find the tenant owes the landlord the monthly fee of \$25.00 for not paying rent on the due date for June and for July 2019. The total arrears for unpaid rent (June, July, and August 01 to 03, 2019) and monthly fees for not paying rent on the due date is \$4,239.50.

Loss of Rent (August, September and October 2019)

Based on the undisputed testimony, I find the tenant did not pay rent for the months of August, September and October 2019 and abandoned the rental property on or before August 03, 2019.

Residential Tenancy Branch Policy Guideline 5 states:

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.

The landlord testified she advertised the rental unit on Kijiji and a local web site on August 06, 2019, asking for the same amount of rent (\$1,995.00) She also advertised with local realtors and she put the house on the market for sale on September 30, 2019. An offer for sale was accepted on October 01, 2019.

I find the landlord should have taken additional steps to mitigate the loss of rent, such as lowering the amount asked for rent.

I find that due to the tenant's failure to pay rent until the set end of tenancy (October 31, 2019) the landlord incurred a loss of rent. I find that for the period of August 04 to September 29 (the day before the house was put on the market for sale), the landlord is entitled to a monetary award.

I order the tenant pay the landlord:

- Pro rata rent from August 04 to August 17 (\$1,995.00 divided by 30, multiplied by 14), totalling \$931.00;
- Pro rata rent from August 18 to August 31 (\$1,995.00 divided by 30, multiplied by 14), discounted 10%, totalling \$837.90;
- Pro rata rent from September 01 to September 14 (\$1,995.00 divided by 30, multiplied by 14), discounted 20%, totalling \$744.80;
- Pro rata rent from September 15 to September 29 (\$1,995.00 divided by 30, multiplied by 14), discounted 30%, totalling \$651.70.

As such, I order the tenant to pay the landlord for loss of rental from August 04 to September 29 the amount of \$3,165.40.

Security deposit

The landlord and tenant signed the move-in Condition Inspection Report. The move-out Condition Inspection Report was only signed by the landlord on September 12, 2019.

On August 31, 2019 the landlord e-mailed the tenant asking her to attend the move-out inspection. On September 06, 2019 the landlord sent, via registered mail, the Notice of Final Opportunity to Schedule a Condition Inspection (RTB-22), scheduling the final inspection for September 12, 2019.

I find the landlord complied with Section 35 of the Act, and the tenant did not provide the forwarding address or submit an application for Dispute Resolution.

The landlord applied for an authorization to retain the security deposit.

In summary:

I find the landlord's loss as a result of the tenant's breaches of sections 26 and 37 of the Act to be \$7,796.90.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

Cleaning	\$200.00
Strata move-out fee	\$100.00
Keys and Garage Door Remote	\$125.00
Unpaid rent (June and July 2019)	\$4,239.50

Loss of Rent (August, September and October 2019)	\$3,165.40
Filing fee	\$100
Subtotal	\$7,929.90
Minus deposit	\$997.50
Total monetary award	\$6,932.40

Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$997.50 in partial satisfaction of losses incurred and grant the landlord a monetary order in the amount of **\$6,932.40**.

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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 21, 2020

Residential Tenancy Branch