



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- authorization to retain the tenants' security deposit under Section 38 of the Act; and
- authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:51 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord's representative KM (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's representative and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the notice of hearing, and evidence (the Materials) by registered mail on November 27, 2019 and February 19, 2020, in accordance with section 89(1)(d) of the Act (the tracking numbers are recorded 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 February 24, 2020.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for damages caused by the tenants and for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the 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 attending party; it is her obligation to present the evidence to substantiate her application.

The landlord testified the tenancy started on April 01, 2018 and ended on November 01, 2019. Monthly rent was \$765.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$375.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The landlord affirmed the tenants have a balance of \$65.00 from August 2019 rent and did not pay rent for September and October 2019. A ledger was submitted into evidence indicating a balance of \$65.00 from August 2019.

A move-in and move-out condition inspection form (the "form"), signed by the landlord and the tenants on April 02, 2018 and November 01, 2019, was produced into evidence. It mentions dirt in the overhead fan, stove, cupboards, kitchen ceilings, bathroom, all the walls of the unit, baseboards and windows. The form indicates a balance due to the landlord of "approx. \$1,900.00" which has been crossed out and changed to "1,964.00". The tenant signed the form and appear to have agreed to the balance owing to the landlord of at least \$1,900.00 comprising unpaid rent and compensation for damages.

The landlord affirmed the tenants left the rental unit dirty. There was dirt in the overhead fan, stove, cupboards, kitchen ceilings, bathroom, all the walls of the unit, baseboards and windows. An invoice of \$315.00 for cleaning all the places mentioned in the landlord's testimony was submitted into evidence.

The landlord affirmed the carpet needed to be cleaned. An invoice of \$84.00 was submitted into evidence. The move-out inspection form indicates the floor in the living room and the bedroom were in poor conditions with stains upon the end of the tenancy, while in the beginning of the tenancy the condition was fair.

The landlord affirmed the tenants caused wall damage. An invoice of \$185.00 for painting was presented into evidence. The landlord is only claiming \$150.00 for this service. The form indicates the walls in the living room were in poor condition, with patches and marks, at time of move-in.

The landlord affirmed the tenants caused damage to the blinds. An invoice of \$68.51 for blinds was presented into evidence. The form indicates the blinds in the living room went from fair to poor condition, with 'broken slats', upon the end of the tenancy.

The landlord is also claiming for late payment fees for the months of August, September and October 2019, at \$25.00 per month. The tenancy agreement submitted into evidence has an addendum that states:

B. ARREARS. Late payments, returned and non-sufficient cheques (N.S.F.) are subject to a maximum service charge of \$25.00 each, or the then current rat charge for such services by the Bank, whichever is greater.

A monetary order worksheet and a ledger were presented into evidence. Both mention a total amount due of \$2,339.00. The landlord is claiming:

Balance of August rent	\$25.00
September rent	\$765.00
October rent	\$765.00
Rental unit cleaning	\$315.00
Carpet cleaning	\$84.00
Wall damage	\$150.00
Blinds	\$120.00
Late fees (August, September and October), \$25.00 per month	\$75.00
Total:	\$2,339.00

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.

Unpaid rent and late payment fee (August, September and October 2019)

The signed tenancy agreement indicates monthly rent was \$765.00, due on the first day of the month. The addendum to the tenancy agreement indicates the tenants agreed to pay \$25.00 if rent is not paid in the first day of the month.

The landlord testified the tenants did not pay \$25.00 for August and did not make any payments for September and October 2019. The ledger and the move-out inspection form submitted into evidence indicate a balance of \$65.00 for August, \$765.00 for September and the same amount for October. The late payment fees are also indicated in the ledger.

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 \$765.00 on the first day of each month.

Based on the testimony of the landlord, the ledger and the move-out inspection form, I find that the tenants did not pay rent in accordance with section 26(1) of the Act and owe the landlord \$25.00 for the balance of August, \$765.00 for September and \$765.00 for October 2019, totaling \$1,555.00.

I also find the tenants owe the landlord the monthly fee of \$25.00 for not paying rent on the due date for August, September and October 2019. The tenant did not pay rent at all for September and October 2019. Section 7(1)(d) of the Residential Tenancy Regulation allows an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Policy Guideline 04 notes a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment. I find that although cheques were not returned by a financial institution, the fee of \$25.00 is a reasonable cost for the administration required when a tenant does not pay rent and the tenant agreed to this fee in the tenancy agreement. The total arrears for unpaid rent (August, September and October of 2019) and monthly fees for not paying rent on the due date is \$1,630.00.

Rental unit 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, the form and the invoice of \$315.00 for cleaning, I find the tenants did not leave the rental unit reasonably clean and the landlord was required to undertake extensive cleaning at the end of the tenancy. I find the landlord had a loss of \$315.00 for cleaning the rental unit.

As such, I award the landlord \$315.00 in compensation for this loss.

Carpet cleaning

Residential Tenancy Branch Policy Guideline 1 states:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Based on the testimony, the move-out inspection form and the invoice of \$84.00 for carpet cleaning, I find the tenants did not leave the rental unit's carpet clean at the end of the one and half year long tenancy. I find the landlord had a loss of \$84.00 for cleaning the rental unit's carpet.

As such, I award the landlord \$84.00 in compensation for this loss.

Wall damage

Residential Tenancy Branch Policy Guideline 1 states:

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:

1. 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.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

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.

The landlord's testimony did not provide details about the damages caused by the tenants to the walls. No photographs were submitted into evidence. The move-out inspection form indicates the walls had pin holes when the tenancy started.

I find the landlord did not prove, on a balance of probabilities, the tenants caused damages to the walls that required the walls to be painted.

As such, I dismiss the landlord's claim for \$150.00 for wall damage.

Internal Window Covering (blinds)

Residential Tenancy Branch Policy Guideline 1 states:

INTERNAL WINDOW COVERINGS

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

The landlord affirmed the tenants caused damage to the internal window coverings and this is substantiated on the form. An invoice of \$68.51 for blinds was presented into evidence.

Based on the testimony, the form and the invoice, I find the tenants are responsible for the loss incurred by the landlord of \$68.51 for replacing the damaged blinds.

As such, I award the landlord \$68.51 in compensation for this loss.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the tenants' security deposit of \$375.00 in partial satisfaction of the monetary losses incurred in this tenancy.

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

In summary:

Unpaid rent and late payment fee (August, September and October 2019)	\$1,630.00
Rental unit cleaning	\$315.00
Carpet cleaning	\$84.00
Internal window coverings	\$68.51
Filing fee	\$100.00
Subtotal	\$2,197.51
Minus deposit	\$375.00
Total monetary award	\$1,822.51

Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the landlord to retain the tenants' security deposit of \$375.00 in partial satisfaction of losses incurred and grant the landlord a monetary order in the amount of **\$1,822.51**.

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: April 14, 2020

Residential Tenancy Branch