



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S

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; and
- authorization to retain the tenant's security deposit under Section 38 of the Act.

I left the teleconference connection open until 2:07 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. 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 January, 30 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 04, 2020.

Preliminary issue – amendment of the application

At the outset of the hearing the landlord requested an amendment to his application to request a monetary award for an extra occupant for the months of April, May and June 2020, in addition to July, August and September 2020. The landlord also requested an amendment for the reimbursement of the filing fee.

I find the two amendments requested are not reasonably anticipated. Accordingly, I reject the amendments sought, in accordance with Rule of Procedure 4.2.

Issue 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 and for unpaid rent?

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 his obligation to present the evidence to substantiate her application.

The landlord testified the tenancy started on May 01, 2017 and ended on October 31, 2019. Monthly rent was \$940.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$447.50 was collected and the landlord still holds it in trust. The tenancy agreement addendum was submitted into evidence.

The landlord affirmed a move-in inspection happened, but the inspection form was not submitted into evidence. A move-out inspection did not occur. The tenant and the landlord had an argument on the move-out day and the tenant only moved out at 7:00 P.M. The forwarding address was provided on October 31, 2019.

The rental unit was in perfect condition when the tenancy began. When the tenancy ended the rental unit was dirty and the carpet needed to be cleaned.

A letter dated November 03, 2019, signed by a neighbour of the landlord, states:

On Friday 1 November 2019, [landlord] knocked on my door and asked me if I would mind looking at [tenant's address] to witness the condition of the suite vacated by [tenant] and prior to the new tenant moving in.

In my opinion, the suite was not ready for occupancy because there was a lot of cleanup work to be done before the new tenant could move in.

A carpet cleaning invoice for \$126.00 dated November 01, 2019 was submitted into evidence.

The new tenant was supposed to move in on November 01, 2020. However, as the rental unit needed to be cleaned, the new tenant was only able to move in on November 03, 2020. The new monthly rent is \$995.00.

The landlord affirmed the tenant had to pay a \$200.00 monthly fee for each additional occupant. The tenancy agreement addendum submitted into evidence states: "The tenant agrees that for each additional occupant in the rental unit, not named above, the rent will increase by \$200.00 per month effective from the date of occupancy."

The landlord learned there was a new occupant in early April 2020. The landlord asked the tenant to pay the additional fee in April 2020, but the tenant only paid this fee in October 2020.

The letter from the landlord to the tenant dated August 19, 2019 states:

Back in June when I talked about the TV being loud, I also mentioned that you had other people living in the rental unit, which is violation to our contract, and other people could not live in your suite. You said that your Girl Friend would be moving out. It has been reported to me that this has not happened, or there is another female living there. It is bad enough that you are noisy and inconsiderate but she is also.

Letters from neighbours dated August 15, 2019 and November 04, 2019 also state that the tenant had a second person living with him since April 2019.

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.

Carpet 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.

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
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, letters and invoice of \$126.00 for carpet cleaning, I find the tenant did not clean the rental unit carpet at the end of a tenancy that lasted over one year and the landlord was required to undertake extensive carpet cleaning at the end of the tenancy.

As such, I award the landlord \$126.00 in compensation for this loss.

Occupant fee

Based on the undisputed testimony, the neighbour's letter and the tenancy addendum, I find the tenant has to pay a monthly fee of \$200.00 for each extra occupant and there was an extra occupant in the rental unit from April to October 2020.

The landlord only applied for a monetary award for the fee for the months of July, August and September 2020.

Loss of rent

Based on the undisputed testimony and the neighbour's letter, I find the new tenant could only move in on November 03, 2020 because the tenant did not clean the rental unit.

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.

I find the landlord made reasonable efforts to clean the rental unit in two days and re-rent it on November 03, 2020. I find that due to the tenant's failure to clean the rental unit upon the end of the tenancy (October 31, 2020), the landlord incurred in a loss of two days of rent (November 01 and November 02, 2020) and the landlord is entitled to a monetary award for these two days. As the rental unit was re-rented for \$995.00 per month, the landlord could be entitled to a monetary award of \$66.33.

Application for occupant fee and loss of rent

The landlord stated in the application:

Amount requested: \$447.50

Description: For having an illegal tenant and refusing to abide by tenancy agreement
Loss of rent due to late move-out.

The landlord did not submit a worksheet or explain in the application how much money he is applying for each of these two separate claims.

The Rules of Procedure state:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

I find the application submitted by the landlord is limited to a total amount of \$447.50 for both claims of occupant fee and loss of rent.

As such, I award the landlord \$447.50 for the extra occupant fee and loss of rent.

Security deposit

I find the landlord received the tenant's forwarding address on October 31, 2019 and filed this application on November 07, 2019, within the day timeframe of Section 38(1)(d) of the Act.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$447.50 security deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act.

In summary:

| | |
|-------------------------------|-----------------|
| Cleaning | \$126.00 |
| Occupant fee and loss of rent | \$447.50 |
| Subtotal | \$573.50 |
| Minus deposit | \$447.50 |
| Total monetary award | \$126.00 |

Conclusion

Pursuant to section 67 of the Act, I authorize the landlord to retain the tenant's security deposit of \$447.50 in partial satisfaction of losses incurred and grant the landlord a monetary order in the amount of **\$126.00**.

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 29, 2020

Residential Tenancy Branch