



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-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 Residential Tenancy Regulation (the regulation) or tenancy agreement pursuant to section 67 of the Act;
- authorization to retain the tenant's 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 2:08 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 December 21, 2019 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 December 26, 2019.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for unpaid rent and damages caused by the tenant?
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 his application.

The landlord testified the tenancy started on July 02, 2018 and ended on December 02, 2019. Monthly rent was \$1,900.00, due on the first day of the month. The tenant was also responsible for paying the electricity of the rental unit. At the outset of the tenancy a security deposit of \$950.00 was collected. The landlord still holds \$800.00 in trust, as the tenant authorized the landlord to deduct \$150.00 for carpet cleaning. The tenancy agreement was submitted into evidence.

The landlord served a one month notice to end tenancy for cause on November 23, 2019 in person. The tenant moved out voluntarily on December 02, 2019, prior to the effective date of the notice, December 31, 2019. The tenant did not pay the rent or the electricity for December 2019. The electricity bill for the month of December 2019 was estimated by the landlord to be \$70.00. However, on December 31, 2019 the bill was available and the total amount due was only \$28.63. The landlord turned off all the appliances to reduce the amount of electricity used in the rental unit after the tenant moved out. The rental unit was not re-rented in December 2019.

A move-in and move-out condition inspection form (the "form"), signed by the landlord and the tenant on July 02, 2018 and December 07, 2019, was produced into evidence. The form indicates the rental unit was in the same condition at the beginning and at the end of the tenancy. The only exception was the carpet which was dirty at the end of the tenancy. The tenant authorized the landlord to retain \$150.00 to clean the carpet. Both parties agreed to conduct the move-out inspection on December 07, 2020.

The landlord affirmed the tenant was very intimidating and aggressive during the move-out inspection. The tenant yelled and put his finger in the landlord's face. For this reason the landlord was very nervous during the inspection and did not mark on the form that the rental unit was overall dirty at the end of the tenancy. A friend of the landlord was with her during the move-out inspection.

The landlord affirmed the cupboards, toilet, and inside the fridge were dirty. Photographs showing the rental unit dirty were provided into evidence. The landlord cleaned the rental unit for seven hours and bought cleaning supplies that cost \$48.76 (receipt produced into evidence). The landlord is seeking compensation for the hours she spent cleaning at \$30.00 per hour, as this is the rate of a cleaner.

When the landlord was cleaning the rental unit she noticed the washing machine was damaged. A piece of clothing was trapped between the door and the seal and this damaged the washing machine. The repair was quoted at \$300.00, but a friend of the landlord changed the broken piece. The landlord spent \$213.97 to repair the washing machine. The repair was only completed on December 17, 2019 (receipt produced into evidence).

The landlord advertised the rental unit during December 2019, but she was not able to re-rent the rental unit until December 31, 2019.

The landlord assumed she would need to stop working for four hours to attend the hearing for this application. The landlord's salary is \$25.68 per hour. The landlord is asking for \$102.72 for compensation for 'time off work'.

A monetary order worksheet was presented into evidence. The total amount requested for the items above mentioned is \$2,992.00.

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.

Unpaid 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 tenant was obligated to pay the monthly rent in the amount of \$1,900.00 on the first day of each month.

Section 45 of the Act states:

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)is 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 Notice served by the landlord states:

If you do not file an Application within 10 days you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner).

The Notice served by the landlord had an effective date 37 days after service. I find the tenant could move out sooner than the effective date. However, as a notice to end monthly tenancy was not served by the tenant on the landlord, he must still pay rent for at least one month, in accordance with Section 45(1)(a) of the Act.

Residential Tenancy Branch Policy Guideline 03 sets standards for mitigating losses of tenants and landlords. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. If a month to month tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

I find the landlord mitigated the loss by cleaning and repairing the rental unit in the ten days after the tenancy ended and advertising the rental unit during December 2019.

Based on the landlord's testimony, tenancy agreement and the monetary order worksheet, I find the tenant did not pay rent in accordance with section 26(1) and 45(1)(a) of the Act and owes rent to the landlord in the amount of \$1,900.00 for December 2019.

Unpaid electricity

The landlord affirmed the electricity for the full month of December 2019 was \$28.63. The landlord moved out on December 02, 2019 and the rental unit was not re-rented in December 2019.

Electricity is a service charged according to consumption. The tenant must not pay electricity beyond the move-out date, as the tenant was not living in the rental unit.

Based on the landlord's testimony and the tenancy agreement provided, I find the tenant owes electricity for the days in December 2019 that the tenant was in the rental unit ($28.63/30 \times 2 = 1.91$). As such, I award the landlord \$1.91.

Cleaning and washing machine repair

The form provided indicates the rental unit was in the same condition at the beginning and at the end of the tenancy. Except for the carpet, it is not mentioned that the rental unit was dirty at the end of the tenancy. The form also indicates the washing machine was in good condition at the beginning and at the end of the tenancy.

Regulation 21 states:

Evidentiary weight of a condition inspection report

21 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.

I find the testimony of the landlord does not outweigh the evidentiary value of the signed condition inspection report because the friend of the landlord did not provide testimony and not enough details were provided by the landlord about the intimidating behaviour of the tenant during the move-out inspection.

As such, I dismiss the landlord's application for compensation for cleaning and washing machine repairs.

Carpet cleaning

The form authorized the landlord to deduct \$150.00 from the security deposit to clean the carpets. The form also indicates the carpets were dirty at the end of the tenancy.

The application for an authorization to retain \$150.00 from the security deposit is moot, as this was authorized by the tenant and there is no need to obtain an order for this deduction.

Time off work

The landlord is seeking \$102.72 as compensation for her time off work to attend the hearing for this application.

Section 72 of the Act only authorizes the recovery of the filing fee for costs associated with participating in the dispute resolution process. Expenses related to attending a hearing are not authorized under the Act to be reimbursed.

As such, I dismiss the landlord's application for reimbursement of the time off work to attend the hearing for this application.

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

Security deposit

I find the landlord received the tenant's forwarding address on December 07, 2019 and filed this application on December 16, 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 \$800.00 balance of the security deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act.

In summary:

Unpaid rent	\$1,900.00
Unpaid electricity	\$1.91
Filing fee	100.00
Subtotal	\$2,001.91
Minus balance of the deposit	\$800.00
Total monetary award	\$1,201.91

Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's security deposit of \$800.00 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of **\$1,201.91**.

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: May 27, 2020

Residential Tenancy Branch