



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding V7 Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-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 1:40 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 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 tenants were served with the application and evidence (the materials) by registered mail on January 09, 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 January 14, 2020.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

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 tenants?
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 landlord, 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 landlord; it is her obligation to present the evidence to substantiate his application.

The landlord affirmed the tenancy started on September 01, 2018 and ended on August 22, 2019. Monthly rent was \$1,450.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$725.00 was collected. The tenancy agreement was submitted into evidence.

A move-in and move-out condition inspection form (the "form"), signed by the landlord and the tenant on August 31, 2018 and August 22, 2019, was produced into evidence. The form indicates the rental unit was dirty upon the end of the tenancy and needed to be cleaned. The tenants authorized the landlord to retain the security deposit.

The landlord affirmed the tenants authorized the landlord to retain the full security deposit because rent for August 2019 was not paid. The landlord affirmed the tenants did not clean the freezer, the bathroom and the cabinets. The landlord affirmed the cleaning cost was \$150.00 and presented a receipt dated August 27, 2019.

A monetary order worksheet was presented into evidence. The total amount requested for the balance of August's rent and cleaning is \$875.00.

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. Based on the undisputed testimony and the tenancy agreement, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,450.00 on the first day of each month and did not pay rent for August 2019.

Based on the undisputed testimony and the form, I find the tenants authorized the landlord to retain the \$725.00 security deposit to offset the unpaid rent of August 2019.

Thus, I find the tenants owe rent to the landlord in the amount \$725.00 for the balance of August 2019.

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), or for cleaning to bring the premises to a higher standard than that set put in the Residential Tenancy Act.

Based on the testimony, form and invoice of \$150.00 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 \$150.00 for cleaning the rental unit.

As such, I award the landlord \$150.00 in compensation for this loss.

Security deposit

The landlord's application to retain the security deposit is moot as the tenants authorized the landlord to retain the full security deposit.

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 – balance of August 2019	\$725.00
Cleaning	\$150.00
Filing fee	\$100.00
Total monetary award	\$975.00

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$975.00.

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: June 04, 2020

Residential Tenancy Branch