



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via email on May 17, 2020. The landlord stated that no response was made by the tenant.

I accept the undisputed affirmed evidence of the landlords and find on a balance of probabilities that the tenant was sufficiently served and is deemed served as per section 90 of the Act.

At the outset the landlords clarified that a \$100.00 claim for recovery of a visitor parking pass was being cancelled. The landlords stated that the Strata has implemented a change issuing new parking passes and no cost has been incurred for this item as all parking passes were replaced with new ones at no cost to the landlord. As such, no further action is required. The landlords' monetary claim shall now proceed on the lower amount of \$3,065.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords seek an amended monetary claim of \$3,065.00 which consists of:

\$315.00	Cleaning
\$2,650.00	Re-Rent Levy
\$100.00	Filing Fee

The landlords state that the tenant vacated the furnished rental unit with no notice prior to the end of the fixed term tenancy leaving it dirty requiring cleaning. The landlords also stated that the tenant failed to return a Visitor Parking Pass.

The landlords stated that the tenant messaged the landlord notifying him that he had vacated the rental unit and would not be returning. The landlords stated that the tenant signed a tenancy agreement, section 61 which states in part,

"If the Tenant moves out prior to the natural expiration of the lease, a re-rent levy of one month's rent equal to \$2,650.00 will be charged to the tenant."

The landlords clarified that this is not a fee but is for a loss of rental income for April 2020. The landlords confirmed that monthly rent in this tenancy agreement is \$2,650.00. The landlords clarified that the tenant failed to provide proper notice to end the tenancy and the landlords suffered a loss of rent. The landlords stated that once

they were informed by the tenant that he was not paying for April 2020 rent, the landlords immediately advertised the unit for rent on April 1, 2020. The landlord stated that due to COVID no inquiries were made nor any showings for the rental unit. The landlords stated that the unit was re-rented to a new tenant on a short term basis to begin the tenancy on April 15, 2020 at \$2,650.00 per month.

The landlord also stated that the tenant vacated the furnished rental unit leaving it dirty requiring cleaning. The landlord stated that upon inspection the rental was found to require cleaning which required a cleaner 10 ½ hours and a carpet shampoo at \$30.00 per hour based on what a professional cleaner would charge. The landlord clarified that both landlords each spent in excess of 10 hours cleaning. The landlords rely on the 6 submitted photographs of the rental unit showing carpet stains, stains on a pillow, a dirty drain pan and dirty tile floor. No further details were provided concerning the cleaning.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the tenant vacated the rental unit without proper notice.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Under section 7 of the Residential Tenancy Act (RTA) and Manufactured Home Park Tenancy Act (MHPTA), if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for resulting damage or loss.

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;*
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;*
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.*

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- 2. re-rent the unit as soon as possible.*

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of

November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

As such, I find that although the landlord seeks loss of rental income for April 2020 of \$2,650.00, only \$1,325.00 is awarded as the landlord was able to re-rent the unit beginning April 15, 2020 at \$2,650.00 per month. I find that the landlord made reasonable efforts to re-rent the unit after being notified of the tenant's breach. The landlords were unsuccessful despite efforts to advertise the rental unit immediately, but were ultimately successful in finding a new tenant at \$2,650.00 per month and as such only suffered a loss of \$1,325.00.

I also find that the rental unit was vacated leaving it dirty requiring extensive cleaning as per the landlord's claim that more than 10 hours for each of the landlords was spent cleaning the unit. However, I find that the landlords have equated themselves to the same level as that of professional cleaners. I find it inappropriate to award the entire amount sought by the landlords. On this basis, I grant the landlords a monetary award of \$200.00 based upon an hourly rate of \$20.00 at 10 hours.

The landlords have been successful in establishing a claim for \$1,525.00. I also order that the landlords are entitled to recovery of the \$100.00 filing fee.

I authorize the landlords to retain the \$1,325.00 security deposit in partial satisfaction of the claim and grant the landlords a monetary order for \$300.00.

Conclusion

The landlords are granted a monetary order for \$300.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: September 18, 2020

Residential Tenancy Branch