



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application for compensation for unpaid and/or loss of rent; damage and cleaning costs; and, authorization to retain the tenant's security deposit and pet damage deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted their evidence for consideration in making this decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

Issue(s) to be Decided

1. Did the landlords establish an entitlement to compensation for the amounts claimed against the tenants?
2. Are the landlords authorized to retain all or part of the tenants' security deposit and pet damage deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on October 1, 2018 with the former owner of the property. The tenancy was initially set for a fixed term of one year and then it continued on a month to

month basis. The rent was set at \$1250.00 payable on the first day of every month. The tenants paid a security deposit of \$625.00 and a pet damage deposit of \$625.00. The tenants had two cats in the rental unit.

The current landlords purchased and took possession of the property on May 15, 2020. Approximately one week later, the landlords introduced themselves to the tenants by way of a letter.

On May 28, 2020 the tenants requested, via email, permission to place a storage shed on the property. The landlords responded, via email, on May 29, 2020 with the following message:

We appreciate you asking for our permission about the shed. We have no problems with you putting up a temporary structure that size however we feel compelled to disclose our long term plans for the property and cottage before you invest in making your space more comfortable.

We purchased the home with the intention of our parents moving into the cottage. The current state of emergency has delayed these plans, as the province will not allow for us to use owner possession until it has been lifted.

We have heard great things about you both as tenants and we regret having to put you in this position. If you have any questions or want to chat more feel free to give me a call or email.

On June 1, 2020 the tenants emailed the landlords the following message:

We appreciate you feeling compelled to disclose your plans. We do feel that discussing this with us from the beginning would have been more appropriate. As your plan is only delayed due to the recent state of emergency, we have found alternative accommodation and begun moving out.

As of 23:59 June 2nd the cottage will be empty, and the keys returned. This will leave \$85 owing to you for the month of June which can be deducted from our damage (\$625) and pet (\$625) deposits, leaving \$1165 owing to us after inspection. This can be paid through e-transfer
tc I am sure that you will find the property in the same state as
when we moved in.

[email address omitted for privacy purposes]

The tenants did not pay any rent on June 1, 2020.

On June 3, 2020 the landlords wrote to the tenants the following message:

We are confirming receipt of your email sent June 1, 2020 at 5:38 pm notifying us of your intentions to abandon the rental unit and to confirm receipt of the door keys you left at our front door after 10pm on June 2, 2020. We are available to complete the condition inspection report for the rental unit with ' ' today, Thursday June 3, 2020 between 5pm - 8pm. Please contact us to confirm your availability.

[tenant's name omitted for privacy purposes]

The parties met at the rental unit on June 3, 2020 and performed the move-out inspection together. The landlord prepared a move-out inspection report which was provided as evidence. The tenants signed the move-out inspection report indicating they agreed with the landlord's assessment of the property. The tenants did not authorize the landlord to retain any portion of the deposits on the move-out inspection report but provided their forwarding address. The landlords proceeded to file this Application for Dispute Resolution within 15 days of the tenancy ending.

Below, I have summarized the landlords' claims against the tenants and the tenants' responses.

Unpaid rent – June 2020

The landlords seek to recover unpaid rent for June 2020 since the tenants did not pay rent for June 2020, and the tenants ended the tenancy on June 2, 2020 without giving sufficient notice to end tenancy.

The landlords submitted that they had intended to have their parents move into the rental unit after the moratorium on evictions (Ministerial Order No. 89) was lifted and their parents sold their home. After the tenants moved out, their parents listed their home for sale and it sold relatively quickly. The rental unit remained vacant for the remainder of June 2020 and July 2020. During that time the landlord made repairs to the rental unit. The landlord's parents moved into the rental unit in August 2020.

The tenants were of the position they were unlawfully evicted for landlord's use of property based on the email of May 29, 2020 and they felt the landlords did not want them as tenants but the pandemic was delaying their inevitable eviction. After receiving the May 29, 2020 email, the tenants started looking for new accommodation and they found a suitable place right away, near the tenant's mother, so they took it.

The tenants were of the position the landlords ought to have disclosed their intentions to them sooner as they initially thought the landlords wanted to keep them as tenants based on their communication with the former owner and realtor.

The landlords were of the position their May 29, 2020 email was merely a courtesy to the tenants so that the tenants were able to make an informed decision before buying a shed and intended to invite further discussion about the landlords' future plans for the rental unit. The landlords pointed out that at that point in time the landlords could not evict the tenants for any reason due to the ban on evictions so the landlords were planning around having the tenants in place until after the ban on evictions was lifted.

Rug cleaning -- \$25.00

The landlords seek to recover the cost to clean the area rug in the rental unit. The tenants were agreeable to compensating the landlords this amount.

Cleaning -- \$200.00

The landlords seek compensation to clean the rental unit. The landlord estimated she spent 10 hours cleaning several areas of the rental unit including: the appliances, the windowsills, the blinds, the shower, and behind the appliances.

The tenants acknowledge that during the move-out inspection the landlords had noted a few things that required cleaning such as cobwebs and dust but when the tenants offered to do more cleaning the landlords indicated they were satisfied. The tenants pointed out that the landlords claimed additional items required cleaning that were not on the condition inspection report, such as behind the appliances.

The landlord acknowledged that the appliances were not pulled out during the move-out inspection and this dirt was found afterwards when the landlord went to refinish the floors.

Fungicide -- \$10.00

The landlords seek to recover the cost to purchase fungicide which was used to clean mould and mildew from the windowsills and bathroom. The landlords attribute for accumulation of mould and mildew to the tenants leaving the blinds down and not opening the windows.

The tenants acknowledge there were issues with mould accumulating in the rental unit, especially in the winter months. The tenants attribute this to the rental unit having lack of ventilation because there was only one fan in the bathroom.

Weather-stripping -- \$18.00

The landlords seek to recover the cost to purchase weather-stripping around the entry door. The landlords submit the weather-stripping was most likely damaged by the tenants' cat(s).

The tenants stated they did not see their cats scratch the weather-stripping and the previous occupant had a dog. The tenants were willing to take partial responsibility for the weather-stripping.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid rent

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, unless the tenant has a lawful right to withhold rent. In this case, the tenants were required to pay rent of \$1250.00 on the first day of every month. The tenants failed to pay rent of \$1250.00 that was due on June 1, 2020 and I find that to be a violation of section 26 of the Act by the tenants.

A tenancy ends in one of the ways provided under section 44 of the Act. I find the tenants brought the tenancy to an end on June 2, 2020 when they vacated or abandoned the rental unit, pursuant to section 44(1)(d) of the Act; however, the parties were in dispute as to whether the landlords are entitled to unpaid rent for June 2020.

Generally, either a landlord or a tenant has to give the other party notice to end tenancy. The landlords had not given the tenants a notice to end tenancy. In fact, the landlords were precluded from doing so due to Ministerial Order No. 89 that was in place until June 24, 2020. The landlord's email of May 29, 2020 was not a notice to end tenancy. Upon careful review of the landlord's email of May 29, 2020 I find the most reasonable interpretation is that it was notification of the landlord's future intentions and I consider it to be merely a courtesy message to the tenants, as submitted by the landlords. The tenants would have been entitled to a proper notice to end tenancy after the ban on evictions was lifted but the tenants did not wait for such a notice to end tenancy. Rather, I find the tenants brought the tenancy to an end on their own volition.

Where a tenant seeks to end a month to month tenancy, the tenant is required to give the landlord at least one full month of written notice, pursuant to section 45 of the Act. Ministerial Order No. 89 did not preclude tenants from giving a notice to end tenancy. Accordingly, I find the tenants were obligated to give the landlords at least one full month of notice to end the tenancy and the tenants failed to do so. Thus, I find the tenants violated section 45 of the Act.

Had the tenants given the landlords proper written notice to end tenancy on June 1, 2020 instead of the email, the notice to end tenancy would have been effective on July 31, 2020 in keeping with the notice requirements of section 45 of the Act. However, the landlords have limited their claim to unpaid rent for June 2020 and I have only considered the landlords' request to recover unpaid rent for June 2020.

I have considered the landlords obligation to mitigate losses. The landlords had their parents move into the rental unit in August 2020 and considering the tenants had use and occupancy of the unit until June 2, 2020 with extremely short advance notice to the landlords I find the landlord's limited claim for loss of rent for June 2020 to be reasonable in the circumstances.

In light of all of the above, I grant the landlords' claim for unpaid rent for June 2020 in the amount of \$1250.00.

Rug cleaning

The tenants were agreeable to compensating the landlords for this and I grant the landlords' request for \$25.00 for rug cleaning.

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy.

The move-out inspection report provides that a number of areas were noted as being dirty and/or stained and the tenant signed the report indicating it fairly represented the condition of the rental unit. Based on the condition inspection report and the landlords' photographs, which support the condition inspection report, I find the tenants are responsible for failing to leave the rental unit "reasonably clean" when they returned possession to the landlords.

Although the tenants claim to have offered to do more cleaning while they were participating in the move-out inspection, a tenant is to have the rental unit "reasonably clean" at the end of the tenancy and by the time the move-out inspection takes place. In other words, the landlord is not obligated to permit the tenant time to return to the rental unit to perform additional cleaning that should have already been done.

The landlords provided a quote in an effort to demonstrate their claim for \$200.00 was reasonable. The cleaner's quote indicates a charge of \$200.00 for six hours of professional cleaner's time as being likely. In hearing the landlord spent 10 hours of time to clean, I find the claim for \$200.00, which amounts to \$20.00 per hour, to be reasonable.

With respect to the tenant's assertion the landlord's claim included areas not indicated on the move-out inspection report, notably the garbage and dirt behind the appliances, I reduce the landlord's claim by \$20.00 to reflect the landlord's failure to inspect these areas during the move-out inspection and allow the tenants to see the areas. Therefore, I award the landlords \$180.00 for cleaning.

Fungicide

It was undisputed that there was an accumulation of mould and/or mildew in the rental unit. The issue is whether the tenants are responsible to pay for the product to kill the fungus. The landlords attributed the accumulation to the tenants not venting the rental unit sufficiently by opening the windows. The tenants also pointed to inadequate ventilation as the cause but attributed the lack of ventilation to the existence of only one fan in the bathroom.

If a rental unit is not equipped with a venting fan or the fan is insufficient, I would expect the tenants to permit ventilation by slightly opening the windows especially during high humidity activities such as cooking and showering. It appears the tenants did not do so in the winter months and this resulted in excessive moisture accumulation. That being said, I find the tenants were responsible for cleaning the excessive moisture from the windowsills and bathroom and any mildew that resulted from their failure to do so under their obligation to maintain reasonable sanitary standards during the tenancy and leave the rental unit reasonably clean at the end of the tenancy (sections 32 and 37 of the Act). Therefore, I grant the landlord's request to recover the fungicide cost from the tenants.

The landlords claimed \$10.00 for the fungicide and the receipt they produced showed the fungicide cost \$9.99 plus tax. Therefore, I find the claim of \$10.00 to be substantiated and I grant that amount to the landlords.

Weather-stripping

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

The landlord's photographs show the weather-stripping appears damaged near the bottom and the move-out inspection report reflects that it was damaged by the cat(s). As such, I find it is likely the tenants' cats scratched it; however, it also looks older and I

am of the view a landlord ought to expect to replace weather-stripping from time to time. Residential Tenancy policy Guideline 40 does not provide for weather-stripping specifically but it indicates a thermal or water sealant has an average life expectancy of 5 years. As such, I find it reasonable to hold the tenants responsible for one-half of the weather-stripping cost and I award the landlord one-half of the amount claimed.

The landlords claimed \$18.00 for weather-stripping and produced a print-out from a home improvement store showing the cost of weather-stripping as \$18.72 plus tax. Therefore, I find the cost of \$18.00 to be substantiated and I award the landlords one half of that or \$9.00.

Filing fee, Deposits and Monetary Order

The landlords' claims had merit and I award the landlords recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution.

I authorize the landlords to retain the tenant's security deposit and pet damage deposit in partial offset of the amounts awarded to the landlords in this decision pursuant to section 72 of the Act.

In keeping with all of the above findings and awards, I provide the landlords with a Monetary Order in the net amount calculated below:

Unpaid rent – June 2020	\$1250.00
Rug cleaning	25.00
General cleaning	180.00
Fungicide	10.00
Weather-stripping	9.00
Filing fee	100.00
Less: security deposit and pet deposit	<u>(1250.00)</u>
Monetary Order	\$ 324.00

Conclusion

The landlords have been authorized to retain the tenants' security deposit and pet damage deposit and have been provided a Monetary Order for the balance owing of \$324.00 to serve and enforce upon the tenants.

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: October 07, 2020

Residential Tenancy Branch