



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FF

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 compensation for unpaid rent, pursuant to section 67 of the *Act*;
- a monetary order for loss under the *Act*, the regulation or tenancy agreement, pursuant to section 67 of the *Act*;
- an authorization to retain all or a portion of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 72 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 1:59 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.

The landlord was granted a substitute service order on July 07, 2020. I accept the landlord's testimony that the tenant was served with the application, evidence and the substitute service order (the materials) by email on June 08, 2020, in accordance with section 71(2) of the *Act* and the substitute service order. A copy of the email was submitted into evidence.

The substitute service order provides that the materials served by email are deemed to be received on the 3rd days after the email was sent. Given the evidence the email was

sent on June 08, 2020, the tenant is deemed to have received the materials on June 11, 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. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's security deposit?
4. 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 his obligation to present the evidence to substantiate his application.

The landlord testified the periodic tenancy started on September 01, 2018 and ended on June 26, 2020. Monthly rent was \$2,052.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$1,000.00 was collected. The tenancy agreement was submitted into evidence.

The tenant emailed the landlord on June 02, 2020 to provide notice to end periodic tenancy and authorize the landlord to use the security deposit for June 2020 rent: "I will try to be as COVID accommodating for you on this as possible and am going to move out at the end of June. I will send you June rent less the deposit today."

The landlord affirmed the tenant paid \$1,052.00 for the balance of June 2020 rent and did not pay July 2020 rent. When the tenancy started the rental unit was clean and the tenant received three electronic keys ("fobs"). When the tenancy ended the rental unit needed cleaning and the tenant only returned two fobs. The landlord paid professional cleaners \$224.00 and \$75.00 to replace the missing fob. The landlord submitted photographs showing a dirty rental unit when the tenancy ended and a monetary order worksheet indicating a claim for \$2,385.00 for unpaid rent, cleaning expenses and the fob replacement.

Analysis

Section 7 of the Act states:

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.

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 the case is on the person making the claim.

The testimony provided by the landlord during the hearing was cohesive and convincing.

Unpaid rent (item 3 in the monetary order worksheet)

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.

Section 45(1) of the Act states:

(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.

Based on the tenancy agreement, the email dated June 02, 2020 and the landlord's testimony, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,052 on the first day of each month, only provided notice to end tenancy on June 02, 2020 and owes the landlord \$2,052.00 for July 2020 rent.

Cleaning (item 2)

Section 37(2) of the Act states:

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.

Based on the testimony and photographs submitted, I find the tenant did not clean the rental unit at the end of tenancy, the landlord was required to undertake cleaning and incurred in a loss of \$224.00.

As such, I award the landlord \$224.00 in compensation for this loss.

Fob replacement (item 1)

Based on the testimony, I award the landlord the amount of \$75.00 for the fob replacement.

Security deposit

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

Filing fee and summary

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

In summary:

Item	Amount \$
July 2020 rent	2,052.00
Cleaning	224.00
Fob replacement	75.00
Filing fee	100.00
Total monetary award	2,451.00

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$2,451.00.

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: October 21, 2020

Residential Tenancy Branch