



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

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 compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and amended claim. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application and amendment. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Although the landlord had applied for a monetary order of \$3,851.69 in their initial claim and amendment dated September 29, 2020, the landlord requested in the hearing to amend the monetary claim for unpaid rent to include the unpaid rent for the months of April 2020 through to June 2020 in the amount of \$7,785.00. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as unpaid rent owed at the time of the hearing. On this basis, I have accepted the landlord's request to amend their application from \$3,851.69 to \$11,636.69 to reflect the unpaid rent that became owing by the time this hearing was convened.

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on August 1, 2019, and was to end on March 31, 2021. The tenants moved out on June 17, 2020. Monthly rent was set at \$2,595.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$1,300.00, which the landlord still holds.

The landlord is seeking compensation for the following losses associated with the tenancy:

Item	Amount
Unpaid Rent for March 2020 through to June 2020	\$10,380.00
Carpet Cleaning	174.20
Rug Doctor rental	35.83
Damage to living room wall due to tv mount	31.73
Damage to millwork (rail/baseboard)	52.79
Replacement deadbolt for front door	55.99
Replacement – 2 sided lock basement interior	25.45
Gas/labour	60.00
Labourer	80.00
Locksmith	140.70
Garage Door Repair	500.00
Filing Fee	100.00
Total Monetary Order Requested	\$11,636.69

The landlord provided undisputed evidence that the tenants failed to pay the monthly rent for the months of March 2020 through to June 2020, despite the fact that they did not give vacant possession to the landlord until June 17, 2020. The landlord submitted a copy of the 10 Day Notice for Unpaid Rent dated March 5, 2020. The landlord challenged the tenants' testimony of financial hardship and harassment by the landlord as he had hired an investigator to confirm that the tenants had purchased and moved into a new home. The landlord called a witness, JR, in the hearing who testified that the

tenants had moved into their new home sometime in March of 2020, and had spoken to the private investigator hired by the landlord.

The landlord is also seeking various losses as set out in their application and listed above. The landlord testified that after receiving notice that the tenants would be moving out, he posted the home for rent, and attempted to show the home to prospective tenants. The landlord testified that on February 20, 2020 he gave written notice to the tenants that he would require access to the home on February 26, 2020 at 6:00 pm to show the home. The landlord also gave written notice on February 20, 2020 to the tenants that he would require access on February 25, 2020 from 4:30 pm. to 6:30 p.m. to install a new range hood and address some issues in the home. The landlord submitted a copy of this notices in his evidentiary materials. The landlord submits that on February 25, 2020 the handyman attended as per the written notice to install the range hood but was denied access by the tenants. As a result, the landlord suffered a monetary loss of \$80.00. The landlord submitted a copy of the payment made for this service in his evidentiary materials. The landlord testified that on February 26, 2020, he had to call a locksmith as the tenants had changed the locks without his knowledge or permission. The landlord submitted an audio file with the tenant confirming that the locks have been changed. The landlord submitted an invoice in the amount of \$140.70 dated February 26, 2020 in support of this loss, as well as photos of the new deadbolt installed by the tenants.

The landlord is also seeking a monetary order for the tenants' failure to leave the home in reasonably clean and undamaged condition. The landlord testified that despite giving the tenants multiple opportunities to attend a move-out inspection, the tenants failed to respond to him. The landlord documented the correspondence sent to the tenant by email on June 29, 2020, July 1, 2020, and a final written request by registered mail on July 2, 2020. The landlord notes that he provided alternative dates to the tenants, as indicated in the letter.

The landlord submitted a copy of the move-in and move-out inspection reports, photos, invoices, and estimates in support of the above claims. The landlord testified that although some areas were cleaned, others were not. The landlord testified that the carpets were changed approximately 5 years ago, and was heavily soiled, including makeup stains in some areas such as the master bedroom. The landlord submitted a copy of a text message dated July 12, 2019 from a party who viewed the home in order to support the condition of the home before this tenancy began. The landlord also submitted a statement from the current tenant dated September 28, 2020 stating that

“all appliances in the home are in good working order and the house was move in ready. We have no issues with...Everything is perfect”.

The landlord is seeking reimbursement for carpet cleaning as well as repairs to the damage in the home. Additionally, the landlord believes that the tenants had damaged the garage door. The landlord is seeking a monetary order of \$500.00 for this loss, and submitted a quotation for the repairs.

The tenants do not dispute that they did not pay rent for the months of March 2020 through to June 2020. The tenants submitted evidence to show that they were experiencing financial hardship, and testified that they were harassed by the landlord despite trying to pay rent for April 2020. The tenants testified that the landlord had attempted to enter the home without proper notice on February 18, 2020 and February 21, 2020, and as a result the tenant had lost their job due to the disruption. The tenants testified that the landlord had changed the locks without their consent, and had acted in a threatening manner towards them and their elderly mother was staying in the home after her flight was cancelled. The tenants confirm that they felt stalked after discovering the landlord had hired a private investigator, and that the landlord had stopped replying to their text messages. The tenants dispute causing the damage to the garage door.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find it undisputed that the tenants occupied the home from March 2020 through to June 17, 2020, and failed to pay any monthly rent for these months as required by the *Act*. I am not satisfied that the tenants were in possession of an order that allowed them

to withhold or deduct this rent. As a result of the tenants' actions, I find the landlord suffered a monetary loss of monthly rent for these months. On this basis, I allow the landlord's monetary claim of \$10,380.00 for the loss of rental income for these four months.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline #7 provides further clarification on the definition of “reasonable purpose” which includes:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

The policy guideline also sets out the procedure in the circumstances where a party does not agree with the landlord’s notice of entry.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

I find that the tenants had refused the landlord entry despite the landlord's notice to do so, and I find that the reasons provided for the entry are included in the definition of

“reasonable” as set out in the legislation. I am also satisfied that the landlord had provided sufficient evidence to support that the tenants had changed the locks in contravention section 31 of the *Act*. I am satisfied that as a result of the tenants’ actions, the landlord suffered a monetary loss of \$80.00 for the attendance of the handyman, who was scheduled to attend as per the landlord’s notice. On this basis, I allow this portion of the landlord’s monetary claim.

The landlord also applied to recover the cost of the locksmith. Although I accept the landlord’s testimony and supporting evidence that the tenants had changed the locks in contravention of the *Act*, I find that the landlord failed to pursue the appropriate remedy of filing an application for an Order for entry before hiring the locksmith. Although I sympathize with the landlord and the inconvenience and stress of dealing with the situation, I find that the landlord had made the decision to hire the locksmith instead of obtaining the proper order, and accordingly I dismiss this portion of the landlord’s monetary claim for recovery of the locksmith fee without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 35 and 36 of the *Act* set out the requirements for a move-out inspection. Section 35(2) of the *Act* requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1),

to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the landlord provided sufficient evidence that he had attempted to fulfill his obligations under section 17(1) of the Regulations and section 35(2) of the *Act*.

Subsection 2 applies "*If the tenant is not available at a time offered under subsection (1)*". In light of the conflicting testimony, I am satisfied that the landlord had made multiple attempts to communicate with the tenants in an attempt to schedule a move-out inspection, but the tenants failed to respond. In consideration that the tenants' failure to respond to the landlord's attempts, the landlord did not have the obligation of proposing alternative times as set out in section 17(2).

I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with detailed evidence, including the move-in and move-out inspection reports, receipts, photos, and invoices. Accordingly, I find the landlord is entitled to compensation associated with the carpet cleaning, damage to the living room wall, and millwork/baseboard. I also allow the landlord's monetary claim for the replacement of the interior door lock.

I have considered the remainder of the landlord's monetary claims, including the claim for damage to the garage door. In light of the conflicting testimony, I am not satisfied that the landlord had provided sufficient evidence to support that this damage was caused by the tenants. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The landlord made a monetary claim for a replacement deadbolt for the exterior door. Residential Tenancy Policy Guideline #7 states the following:

The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks in this circumstance.

I find that changing or re-keying the exterior door falls under the responsibility of the landlord. As noted above, I do not find that the landlord had the right to change the locks during the tenancy, despite the tenants' contravention of the *Act*. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

Similarly, I am not satisfied that the landlord had provided sufficient evidence to support that the monetary claim for gas and labour. I find that the landlord has not met the burden of proof to support that this is a direct loss due to the tenants' contravention of the *Act*. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

As I find that this application has merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$9,580.00 in the landlord's favour under the following terms:

Item	Amount
Unpaid Rent for March 2020 through to June 2020	\$10,380.00
Carpet Cleaning	174.20
Rug Doctor rental	35.83
Damage to living room wall due to tv mount	31.73
Damage to millwork (rail/baseboard)	52.79
Replacement – 2 sided lock basement interior	25.45
Labourer	80.00
Filing Fee	100.00
Less Security Deposit	-1,300.00
Total Monetary Order to Landlord	\$9,580.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: November 24, 2020

Residential Tenancy Branch