



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- 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;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,469.53 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:21 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. 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 tenant obtained an order for substituted service by email on October 30, 2020. She testified she served the landlord with the notice of dispute resolution form and supporting evidence package via email that same day. I find that the landlord was served with this package in accordance with the Act and the October 30, 2020 order.

Preliminary Issue – Evidence Uploaded at Hearing

At the hearing, the landlord referred to the Strata Bylaws. She testified that she thought she uploaded these to the RTB evidence portal and that she included them in the evidence package she emailed to the tenant.

I reviewed the evidence uploaded to the evidence portal and could not locate a copy of the bylaws, although I did locate a file named "Strata_By_Law.pdf" which was actually a letter from the strata's property management company to the tenant. This same letter had been uploaded the evidence portal under another file name. The tenant stated that

she likely uploaded the same document twice, mistakenly labeling the letter as the bylaws and that this caused her to think she had uploaded the bylaws.

In light of this inadvertent error, and as the tenant has been served with the bylaws, I permitted the landlord to upload the Strata Bylaws during the hearing. I have accepted this document into evidence and considered it when writing this decision.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$4,469.53;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting August 1, 2020 and ending October 31, 2020. The rental unit was provided to the tenant furnished. Monthly rent was \$2,220 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,100, which the landlord continues to hold in trust for the tenant. The landlord still retains this deposit. The tenant also signed a *Strata Property Act* Form K Notice of Tenants Responsibilities which requires a tenant to comply with the strata bylaws and requires that the tenant is responsible for any fines incurred as a result of his breaches of these bylaws.

The tenant vacated the rental unit on October 5, 2020. He did not provide the landlord with a forwarding address.

The parties did not conduct a move-in condition inspection walkthrough at the start of the tenancy. The landlord testified that she had returned from the United States just prior to the start of the tenancy and had to self-isolate for 14 days. She testified that an agent of hers had conducted a move-out condition inspection report for the prior occupants of the rental unit (the "**Prior Report**") shortly before the tenant moved in. She testified that the tenant and her verbally agreed that she would provide him with a copy of the Prior Report, and that he could do a walkthrough himself and provide photos of any damage to the rental unit that was not captured on the report. The landlord did not enter a copy of the Prior Report into evidence.

The landlord submitted an email into evidence from the tenant dated August 5, 2020, which attached 12 photographs showing the condition of the floor and carpet in the rental unit. The carpet appeared lightly stained and there were a few slight scratches on

the laminate flooring. Additionally, the photos showed a few small dents in the wall and the baseboards. The landlord testified that these items were damaged as shown in the photographs prior to the start of the tenancy.

The landlord testified that the tenant vacated the rental unit prior to the end of the term of the tenancy agreement. She testified that he sent her a text message on September 16, 2020 notifying her that he would be moving out "before the first". The landlord reminded him that the term of the tenancy was until October 31, 2020. He replied that he had a "couple tenants for [the landlord]". The tenant never provided the landlord with their names and he vacated the rental unit on September 30, 2020. He did not pay any rent for October 2020.

The landlord engaged a property management company who advertised the rental unit on Facebook, Kijiji, and Craigslist, and managed to secure new tenants starting November 1, 2020.

The landlord testified that she attempted to schedule a move-out condition inspection report with the tenant, but that he did not respond to the request. She testified that she sent him a Notice of Final Opportunity to Schedule a Condition Inspection (Form RTB - 22), proposing an inspection on October 8, 2020, but that he did not respond. She testified that she attended the rental unit on October 8, 2020, and the tenant did not attend. She conducted a move out condition inspection in his absence. She completed a condition inspection report (the "**Move Out Report**") which she has submitted into evidence.

The landlord testified that the tenant left the rental unit in a damaged and uncleaned condition. The Move Out Report recorded:

- 1) damage to the wall in the entryway;
- 2) black marks and dents on the wall in the living room;
- 3) large dents and scratches from moving furniture on the floor of the living room and dining room;
- 4) stained and soiled master bedroom carpet;
- 5) a broken tank lid on the bathroom toilet;
- 6) a burned chair, which looked like cigarettes had been put out on it; and
- 7) nail holes in the walls of the living room.

The Move Out Report also indicated that the tenant had not returned a parking pass issued by the municipality.

The landlords submitted photographs of the rental unit taken during the move out inspection which show the dining room floor to be heavily scratched and marked and did a significantly worse condition than was depicted in the photographs taken by the tenant at the start of the tenancy. She also submitted photographs of the bedroom carpet which depict several large black stains. These stains are again much more prominent than the ones captured in the photographs taken by the tenant at the start of the

tenancy. The landlord also submitted photos of a cracked toilet basin and a burned green armchair. No photos of these items were taken by the tenant at the start of the tenancy. The landlord also submitted photos of drywall in the living room and the baseboards which show additional damage to them then what was captured in the photographs of these same areas taken by the tenant at the start of the tenancy.

The landlord testified that the tenant did not pay the \$100 move out fee which was required by the strata bylaws nor did he pay a bylaw infraction fine of \$200 that was levied against the landlord due to the tenant's actions. The landlord submitted a letter from the strata's property management company dated August 20, 2020 which indicates that the strata levied a \$200 fine against the landlord due to a noise infraction of the tenant on August 18, 2020.

The landlord also provided a copy of the strata bylaws which state about a person moving into or out of a residential straddle lot is required to pay a fee of \$100. The bylaws further clarify that a "move" is defined as a change in occupancy and does not require furniture or possessions to be moved.

The landlord is seeking compensation for the fine, the move out fee, as well as the replacement cost of the parking pass (\$12.84). The landlord included a screenshot of the municipal website which sets up the cost of a replacement parking permit at \$12.00 plus GST (which I note totals \$12.60 and not \$12.84 as claimed by the tenant).

The landlord is also seeking compensation for one month's loss rent in the amount of \$2,200 plus \$100 in advertising costs for securing a new tenant. The landlord did not provide any documentation in support of this \$100 claim although she testified that the property management company charged her \$300 to secure a new tenant.

Finally, the landlord claims \$1,857 in compensation for cleaning costs and repair and the costs to repair or replace the items damaged by the tenant, representing the following:

- 1) \$128.40 in cleaning costs which included removal of garbage and rearranging of the furniture to the original layout;
- 2) \$135.00 for carpet shampooing and stain removal;
- 3) \$360.00 for the replacement of the broken toilet tank lid;
- 4) \$448.29 for repairs to the floor and walls. This amount includes labour and materials for repainting and replacing damaged floorboards; and
- 5) \$785.00 for the replacement of the burned chair;

The landlord provided invoices or quotes supporting each of these amounts. She testified that the damaged chair was upholstered using velvet and she was advised by the chairs manufacturer that this material could not be repaired, only replaced.

In summary, the landlord seeks a monetary order of \$4,469.84, representing the following:

Loss of October Rent	\$2,200.00
Advertising Costs	\$100.00
Strata Fine	\$200.00
Move Out Fee	\$100.00
Parking Pass Replacement	\$12.84
Cleaning and Repairs	\$1,857.00
Total	\$4,469.84

Analysis

Residential Tenancy 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 “**Four-Part Test**”)

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant breached the Act, that she suffered a quantifiable loss as a result of the breach, and that she acted reasonably to minimize her loss.

a. Loss of October 2020 Rent and Advertising Costs

The tenancy agreement was for a fixed term ending on October 31, 2020. The tenant vacated the rental unit prior to the end of the fixed term and did not pay any portion of the October 2020 rent. The tenant breached the tenancy agreement by moving out prior to the end of the fixed term. As a result of this breach, the landlord lost the ability to collect rent from the rental unit for the month of October 2020 in the amount of \$2,200. I find that the landlord acted reasonably to minimize her loss. She was only made aware of the tenant's intention to vacate the rental unit 14 days before he left, and that this was not enough time to be able to secure a new occupant for October 1, 2020. As such, I order that the tenant pay the landlord \$2,200 in compensation for this loss.

I do not find that the landlord suffered loss in the form of advertising costs or tenant placement costs as a result of the tenant's breach. Had the tenant, on September 16, 2020, given notice to the landlord of his intention to vacate the tenancy at the end of the term, he would have complied with the Act. As such, the landlord would have had to secure a new tenant for November 1, 2020 through no breach of the tenancy. As such, any costs incurred in securing a new tenant for November 1, 2020, were not caused by the tenant's breach, but were rather costs that the landlord would have had to incur in any event. I decline to award the landlord any amount for her advertising costs.

b. Fines, Fees, and Parking Pass

I accept the landlord's testimony that she incurred a fine of \$200 from the strata due to the tenant's conduct. I also accept her testimony that she was charged a \$100 fee for the tenant's move out, per the Strata Bylaws. The Form K submitted into evidence forms part of the tenancy agreement and requires the tenant to reimburse the landlord for any fines or fees incurred due to their actions. The tenant did not do this. As such, the landlord is entitled to a monetary order for these amounts.

I accept the landlord's testimony that the tenant was provided a parking pass at the start of the tenancy and that he did not return it at the end of the tenancy. I accept her evidence that the tenant failed to return this item at the end of the tenancy. He must compensate her for the replacement cost. As stated above, I calculate the replacement cost as \$12.60 (\$12.00 plus GST) and not \$12.84 as claimed by the landlord.

c. Cleaning and Repair

The landlord did not submit the Prior Report into evidence. The landlord did not conduct a move-in condition inspection report. The only evidence I have as to the condition of the rental unit at the start of the tenancy are the photographs attached to the email sent to her by the tenant. I accept that those photos capture the condition of the rental unit at the start of the tenancy. However, I can only determine the condition of those parts of the rental unit shown in the photos at the start of the tenancy with any degree of certainty. These photos do not show the toilet or the green armchair. As such, I cannot say what these items' condition was at the start of the tenancy. Accordingly, while I

accept that, at the end of the tenancy, these items were damaged as shown in the landlord's photos taken during the move-out inspection, I cannot say whether they were damaged during the course of the tenancy as the landlord has failed to provide any documentary evidence establishing that they were undamaged when the tenant moved in.

As such, I decline to award the landlord any amount in connection with these two items.

Based on my review of the photos taken before and after the tenancy, I find that the tenant caused damage to the carpets, flooring, and walls in the rental unit beyond that of reasonable wear and tear. The stains on the carpet are significant and will require cleaning to remove. The number of scratches on the floor significantly increased from the beginning of the tenancy to the end, and their severity similarly grew. The severity in damage to the walls at the end of the tenancy was also greater than at the start. I find that repairs are required to remediate the damage to the walls and flooring.

I find that the amounts claimed by the tenant to clean the carpet and repair the floor and walls are reasonable. I order the tenant pay the landlord these amounts (\$135.00 and \$448.29 respectively).

I also accept the landlord's testimony that the tenant did not clean the rental unit prior to leaving, and that it required cleaning. I find that the amount claimed (\$128.40) is reasonable. The tenant must pay the landlord that amount.

Pursuant to section 72(1) of the Act, as the landlord has been partially successful in the application, she may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$2,225.29, representing the following:

Loss of October Rent	\$2,200.00
Strata Fine	\$200.00
Move Out Fee	\$100.00
Parking Pass Replacement	\$12.60
Cleaning Costs	\$128.40
Carpet Cleaning	\$135.00
Floor and Wall Repair	\$448.29
Filing Fee	\$100.00
Security Deposit Credit	-\$1,100.00
Total	\$2,224.29

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: January 28, 2021

Residential Tenancy Branch