



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FFL

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;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit in satisfaction of the monetary order requested, pursuant to section 72;
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by advocate LL. Tenant NO affirmed she represents tenant KM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Both parties agreed the forwarding address was not served. The landlord observed the tenant move out and confirmed her current address with the tenant's current address building concierge.

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 rental the tenants' security deposit?
4. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, 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 parties; it is the landlord's obligation to present the evidence to substantiate her application.

Both parties agreed the periodic tenancy started on May 16, 2018. Monthly rent of \$2,750.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$1,375.00 was collected and the landlord holds it in trust. The landlord affirmed the tenancy ended on September 21, 2020 at 6:30 P.M. The tenant stated it ended on September 17, 2020. The tenancy agreement and the addendum were submitted into evidence. It states:

3. STRATA TITLED PROPERTIES.

c) The tenant is responsible for all move-in fees, move-out fees...

[...]

11. MOVE OUT CLEAN

Upon vacating the Rental Unit, the Tenant must pay for a professional move-out clean or have the Rental Unit and applicable areas of the Residential Property delivered in a similar industry standard of cleanliness...

The landlord said she served a 2 month notice to end tenancy for Landlord's use of the property (the 2 Month Notice) on July 13, 2020 and the effective date was September 30, 2020. The tenant testified she received the 2 Month Notice, did not serve the landlord a 10 day written notice and left the rental unit on September 15, 2020. The tenant stated she did not pay August and September's rent and authorized the landlord to retain the security deposit for September's rent.

The landlord affirmed she paid the move-out fee in the amount of \$250.00. The tenant stated she should not pay this fee because she only left the rental unit because of the 2 Month Notice.

The landlord testified the tenant received two mailbox keys when the tenancy started and only returned one key. The landlord paid \$70.00 to have the key replaced. A hand-written receipt was submitted into evidence. The tenant said she lost one mailbox key.

The landlord affirmed she paid \$80.00 for a professional carpet cleaning service, as the tenant did not clean the carpet when the tenancy ended. The tenant stated the carpets were not clean when the tenancy started and she cleaned the carpet in one of the bedrooms.

The move-in inspection form signed only by the tenant on May 13, 2018 was submitted into evidence. The landlord testified the tenant refused to sign the report on the move-out date. The tenant said the landlord did not have the report for her to sign it. The report says when the tenancy started: 'carpets not shampooed'.

The landlord is claiming \$16.17 for registered mail costs.

The landlord testified the tenant damaged and broke the washing machine soap dispenser. The washing machine was purchased in 2010, the landlord tried to repair it but this was not possible. The landlord purchased a new washing machine. A \$1,213.51 receipt was submitted into evidence.

The tenant said the washing machine was from 2008, the soap dispenser was cracked when the tenancy started and the washing machine was working fine when the tenancy ended.

The move-in inspection form does not mention the condition of the washing machine when the tenancy started.

The total monetary order claim submitted by the landlord is \$4,479.60.

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 their case is on the person making the claim.

Unpaid rent (item 1 in the monetary order worksheet)

Based on both parties undisputed testimony and the tenancy agreement, I find the tenant agreed to pay monthly rent in the amount of \$2,750. 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.

Based on both parties undisputed testimony I find the landlord served the tenant a 2 Month Notice on July 13, 2020.

Section 50(1) of the Act states:

If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) **giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice**, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(emphasis added)

As the tenant did not serve the landlord a written notice to end the tenancy on a date that is earlier than the effective date of the 2 Month Notice, I find the tenant could not have ended the tenancy in mid-September 2020.

Section 51 of the Act states:

(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Based on both parties undisputed testimony, I find the tenants did not pay August's rent in accordance with section 51(1) of the Act and the tenants did not pay September's rent. I note that section 51(1.1) does not prohibit the tenant to receive his compensation in the month prior to the final month of the 2 Month Notice.

In accordance with section 26(1) the tenants owe the landlord in the amount of \$2,750.00 for September's 2020 rent.

Move-out fee (item 3)

Based on both parties undisputed testimony and section 3 of the addendum, I find the tenant agreed to pay the move-out fee and did not pay this fee.

Based on the landlord's undisputed testimony, I find the landlord paid the move-out fee in the amount of \$250.00.

I note that section 49 of the Act does not nullify the terms of the tenancy agreement.

As such, I award the landlord \$250.00 in compensation for this loss.

Mailbox key replacement (item 4)

Section 37 (2)(b) of the Act states: "When a tenant vacates a rental unit, the tenant must give the landlord all the keys..."

Based on both parties undisputed testimony and the receipt, I find the tenant breached section 37(2)(b) of the Act by not returning one mailbox key and the landlord incurred a loss of \$70.00 to replace it.

As such, I award the landlord \$70.00 in compensation for this loss.

Carpet cleaning (item 5)

Section 37(2)(a) of the Act states: "When a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean"

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on both parties undisputed testimony, I find the tenancy lasted more than one year, the tenants breached section 37(2)(b) of the Act and clause 11 of the tenancy agreement addendum by not professionally cleaning the carpet when the tenancy ended and the landlord incurred a loss of \$80.00 to professionally clean the carpet.

As such, I award the landlord \$80.00 in compensation for this loss.

I note the tenant could have submitted an application for an order for the landlord to clean the carpets when the tenancy started.

Registered mail expenses (item 6)

Section 72 of the Act only authorizes the recovery of the filing fee. Expenses related to services of documents, such as the cost of registered mail, are not authorized under the Act to be reimbursed.

As such, I dismiss the landlord's application for reimbursement of the registered mail expenses.

Washing machine (item 7)

The parties offered conflicting testimony about the condition of the washing machine when the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the receipt for a new washing machine does not prove the old washing machine was not functioning when the tenancy ended. I find the landlord did not prove, on a balance of probabilities, the tenants damaged the washing machine during the tenancy and it had to be replaced at the end of the tenancy.

As such, I dismiss the landlord's application for compensation for the washing machine.

Filing fee and summary

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

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$1,375.00 security deposit to offset the monetary award.

In summary, the landlord is entitled to:

Expenses	\$
Unpaid rent September 2020	2,750.00
Move-out fee	250.00
Mailbox key replacement	70.00
Carpet cleaning	80.00
Filing fee	100.00
Subtotal	3,250.00
Minus deposit	\$1,375.00
Total monetary award	\$1,875.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,375.00 security deposit and grant the landlord a monetary order in the amount of \$1,875.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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: January 21, 2021

Residential Tenancy Branch