



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord file 1: OPM, MNRL-S
For the landlord file 2: OPR-DR, OPRM-DR, FFL
For the tenant: CNR, MNDCT, LRE

Introduction

This hearing dealt with a cross application. The landlord's application file 1 (the file number is mentioned on the cover page of this application) pursuant to the Residential Tenancy Act (the Act) is for:

- an order of possession under a mutual agreement to end a tenancy, pursuant to sections 44 and 55 of the Act;
- a monetary order for compensation for unpaid rent, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38;

The landlord's application file 2 (the file number is mentioned on the cover page of this application) pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application file 2 was amended to include a monetary order for loss under the Act, the Residential Tenancy Regulation (the regulation) or tenancy agreement, pursuant to section 67.

The tenant's application pursuant to the Act is for:

- cancellation of the Notice, pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an order to restrict or suspend the landlord's right of entry, under section 70.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties confirmed they understood my explanation that the hearing must remain civil and orderly, only one party can speak at a time and that the parties will each have a chance to speak and present their claims.

Preliminary Issue – Service

As both parties were present service was confirmed for landlord's application file 1 and the tenant's application. 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.

The landlord affirmed he served materials for file 2 to the tenant in person on November 23, 2020. The landlord stated he was wearing a blue jacket when he served the materials. The landlord testified he sent a registered mail package on January 03, 2021 with the amendment of file 2 (the tracking number is on the cover page of this decision). The package was sent to the tenant's forwarding address provided in writing by the tenant on December 24, 2020.

The tenant said he did not receive any document from the landlord for file 2.

Based on the convincing and coherent landlord's testimony and the tracking number provided, I find the tenant was served the landlord's materials for file 2 in accordance with section 89(2)(a) and the amendment for file 2 in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the amendment for file 2 on January 08, 2020, in accordance with section 90(a) of the Act.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord affirmed he learned the tenant abandoned the rental unit in the first week of December 2020 and he changed the locks on January 01, 2021. The tenant stated he left the rental unit on November 28, 2020.

The landlord's application for an order of possession and the tenant's application for an order to restrict or suspend the landlord's right of entry and for cancellation of the Notice are moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the landlord's application for an order of possession and the tenant's applications for an order to restrict or suspend the landlord's right of entry and for cancellation of the Notice.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for compensation for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application

Is the tenant entitled to a monetary order for loss?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on June 01, 2020. Rent is \$950.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$475.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord affirmed he observed the tenant moving out on November 27 or 28, 2020, but the tenant did not remove all his belongings from the rental unit and did not return the keys. A text message dated November 22, 2020 sent by the tenant threatening to change the locks was submitted into evidence:

Oh it's not a threat it's a promise [landlord] I'll be changing the locks tomorrow and nobody will be allowed to enter the suite until the arbitration hearing is completed and a decision is made!

Both parties agreed the tenant provided the landlord the forwarding address on December 24, 2020 in writing.

The tenant testified he moved out on November 28, 2020, he did not return the keys and did not inform the landlord he was moving out because the parties signed a mutual agreement to end the tenancy effective on November 30, 2020.

The landlord submitted a monetary order worksheet in file 1 indicating rent arrears for October 2020 in the amount of \$750.00 and rental arrears for November 2020 in the amount of \$950.00. The landlord submitted a monetary order worksheet in file 2 indicating rent arrears for December 2020 in the amount of \$950.00, expenses for the lock change in the amount of \$58.73 and expenses for "cleaning, repair and removal" in the amount of \$300.00.

The landlord said the tenant is in arrears of \$750.00 for the balance of October's 2020 rent, \$950 for November's 2020 rent and \$950.00 for December's 2020 rent, as the landlord did not receive the keys and only changed the locks on January 01, 2021.

The tenant does not agree with the landlord's accounting and claims he paid \$200.00 for rent in November 2020 and he does not owe any arrears.

The November 05, 2020 Notice submitted into evidence indicates the tenant was in arrears on that date for \$1,700.00 for rent due on November 01, 2020. A proof of service (RTB-34) signed by the tenant was submitted into evidence stating the Notice was served in person on November 05, 2020.

The landlord is claiming for reimbursement of the expenses he incurred to change the rental unit's door lock. A door lock receipt in the amount \$58.73 was submitted into evidence.

The landlord stated the tenant left the one-bedroom rental unit dirty and did not remove some of his personal belongings. The landlord and his wife cleaned the rental unit for 2 hours. The rental unit was clean when the tenancy started and had 4 or 5 nail holes. The landlord repaired the drywall, as the tenant damaged it during the tenancy. The landlord submitted into evidence photographs taken on January 01, 2021 showing the rental unit's floor, bathroom and inside the fridge.

The landlord testified the tenant damaged the fridge door. When the tenancy started the fridge was in good condition. The landlord submitted into evidence a photograph taken on January 01, 2021 showing a dent on the rental unit's fridge door.

The landlord is claiming for the reimbursement of expenses to clean, repair the drywall, remove the tenant's belongings and repair the fridge door in the total amount of \$300.00. The landlord could not explain how much money he is claiming for each of these claims.

After the landlord concluded his testimony I asked the tenant some questions about the landlord's testimony. I explained to the tenant he will have enough time to provide his complete testimony but first he should answer my questions. The tenant was abusive when answering my first question and stated: "All that the landlord is saying is BS". I warned the tenant he must be respectful and I may mute him, pursuant to Rule of Procedure 6.10.

The tenant continued to be disrespectful and affirmed: "I'm done with my application and with the RTB. I was interrupted and I will submit a complaint." I explained to the tenant twice that he will have the change to provide further testimony, but he confirmed he wanted to withdraw his application and abruptly left the hearing after 60 minutes.

The landlord did not oppose to the tenant's withdrawal of his application.

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

Based on both parties undisputed testimony and the tenancy agreement, I find the tenant agreed to pay monthly rent in the amount of \$950.00. 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.

Both parties offered a contradictory and conflicting testimony about a verbal agreement regarding the payment of October's and November's 2020 rent. As both parties contradicted themselves several times I am not satisfied, on a balance of probabilities, that the parties had a verbal agreement regarding the payment of October's and November's 2020 rent. I find the tenancy agreement requires the tenant to pay October's and November's 2020 in the amount of \$950.00 per month.

Based on both parties' testimony and the tenant's text message dated November 22, 2020, I find the tenant did not return the rental unit's keys to the landlord and did not remove some of his personal belongings. As such, I find the tenant must pay rent for December 2020 per section 26(1) of the Act, given the tenant did not return the keys, did not remove his belongings and the landlord did not have possession of the rental unit during December 2020.

Based on the monetary order worksheets submitted in the landlord's files 1 and 2, the Notice, and the text message dated October 30, 2020, I find the tenant paid \$200.00 for October's 2020 rent and did not pay November's and December's 2020 rent.

In accordance with section 26(1) of the Act the tenant owes the landlord \$750.00 for the balance of October's 2020 rent, \$950.00 for November's 2020 rent and \$950.00 for December's 2020 rent.

Lock replacement

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 the landlord's undisputed testimony and the receipt for a new lock, I find the tenant breached section 37(2)(b) of the Act by not returning the rental unit's key and the landlord incurred a loss of \$58.73 to replace the rental unit's lock.

As such, I award the landlord \$58.73 in compensation for this loss.

Cleaning, removal of tenant's belongings, drywall damages and fridge door repair

The landlord did not explain how much money he spent to repair the fridge door and did not provide details about the drywall damage.

I am not satisfied with the landlord's vague testimony about the fridge door repair and the drywall damage. Thus, I find the landlord did not prove, on a balance of probabilities, that he suffered a loss or a damage because of the tenant's failure to comply with the Act, regulation or the tenancy agreement.

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 the landlord's testimony and the photographs submitted into evidence, I find the tenant breached section 37(2)(b) of the Act by not cleaning the rental unit when the tenancy ended.

I find the landlord's testimony that he spent \$300.00 to clean the rental unit was vague. I find it reasonable to award \$150.00 for cleaning costs and removal of the tenant's belongings.

As such, I award the landlord \$150.00 in compensation for cleaning costs and removal of the tenant's belongings and dismiss the landlord's application for drywall damages and the fridge door repair.

Tenant's application

Rules of Procedure 7.3 and 7.4 state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the tenant abandoned the hearing and did not present his evidence, I dismiss the tenant's application without leave to reapply.

Filing fee and summary

As the landlord was successful in his applications, I find the landlord is entitled to recover the \$100.00 filing fee for application file 2.

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 \$475.00 deposit to offset the monetary award.

In summary, the landlord is entitled to:

Expenses	\$
Balance of unpaid rent for October 2020	750.00
November 2020 rent	950.00
December 2020 rent	950.00
Lock replacement	58.73
Cleaning costs and removal of tenant's belongings	150.00
Filing fee	100.00
Subtotal	2,958.73
Minus deposit	-475.00
Total monetary award	2,483.73

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$475.00 deposit and grant the landlord a monetary order in the amount of \$2,483.73.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: January 29, 2021

Residential Tenancy Branch