



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, 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 unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 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, represented by agents GL (the landlord) and LO, 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.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) in person, in accordance with section 89(1) of the Act. The landlord stated the tenant did not provide the forwarding address, the landlord has a friend in common with the tenant and asked this friend to schedule a meeting. The landlord served the tenant in this meeting on October 31, 2020 at 2:22 P.M. A witnessed proof of service declaration was submitted.

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 deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, 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 party; it is the landlord's obligation to present the evidence to substantiate his claims.

The landlord affirmed the tenancy started on December 01, 2019 and ended on August 31, 2020. Rent was \$1,095.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$547.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated the tenant was offered two dates to attend the move-out inspection (August 31, 2020 at 1:00 P.M. and September 01, 2020 at 2:00 P.M.) and was served the Notice of Final Opportunity to Schedule a Condition Inspection (RTB-22). The tenant did not attend the move-out inspection. A copy of the Condition Inspection Report (the Report) signed by both parties on the move-in and only by the landlord on the move-out was submitted into evidence. The landlord submitted this application on October 27, 2020.

The landlord testified the tenant did not pay rent in April, May, June, July and August 2020. The total amount in arrears for unpaid rent is \$5,475.00 (\$1,095.00 x 5).

The landlord is claiming for \$255.23 for cleaning expenses and replacement of light bulbs. The landlord said and the report indicates the rental unit was clean when the tenancy started and dirty when it ended. The landlord submitted into evidence a cleaning invoice in the amount of \$245.00 for 7 hours of cleaning at the hourly rate of \$35.00. The stove, toilet, bathtub and cupboards were cleaned. The rental unit is a 900 square feet 2-bedroom apartment.

The landlord submitted into evidence a receipt in the amount of \$10.23 for light bulbs. The light bulbs were working when the tenancy started and burned when the tenancy ended. The report indicates 'light bulbs burnout' when the tenancy ended and in good condition when the tenancy started.

The landlord is claiming for \$110.25 for carpet cleaning expenses. The landlord stated and the report indicates the carpet was clean when the tenancy started and dirty when the tenancy ended. The landlord submitted into evidence a carpet cleaning invoice in the amount of \$110.25.

The landlord is claiming for \$187.67 for wall painting expenses. The landlord affirmed the tenant damaged the hallway wall during the tenancy and left large nail holes in the living room. The report indicates the hallway wall was clean when the tenancy started and 'DT SCUFFS' when the tenancy ended and the living room wall contained 8 nail holes. The landlord submitted into evidence a receipt for 4 hours of labour and paint in the total amount of \$187.67.

The landlord is claiming for \$99.40 for key replacement. The landlord testified the tenant had two keys and only returned one key when the tenancy ended. The landlord rekeyed the rental unit and submitted into evidence a receipt in the amount of \$99.40.

The monetary order worksheet has a total amount of \$6,127.55.

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.

Security deposit

The landlord complied with the obligation to provide the tenant with two opportunities for the end of tenancy condition inspection and completed the inspection pursuant to section 35(5) of the Act. As the tenant failed to participate in the inspection, the tenant's right to the return of the security deposit is extinguished pursuant to section 36(1).

Unpaid rent

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant agreed to pay monthly rent in the amount of \$1,095.00 and did not pay rent for April, May, June, July and August 2020. 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.

In accordance with section 26(1) of the Act the tenant owes the landlord \$5,475.00 for April, May, June, July and August 2020 rent.

Cleaning

Section 37(2) of the Act states:

- (2) 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, and

(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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 undisputed testimony and the report, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended and the landlord incurred a loss.

Given the cleaning invoice, I find it reasonable to award the landlord compensation in the amount of \$245.00 for 07 hours of cleaning.

As such, I award the landlord \$245.00 in compensation for this loss.

Light bulbs

Residential Tenancy Branch Policy Guideline 1 states:

LIGHT BULBS AND FUSES

2. The tenant is responsible for:

- ☐ Replacing light bulbs in his or her premises during the tenancy,

Based on the landlord's undisputed testimony and the report, I find the tenant breached section 37(2)(a) of the Act by not replacing the light bulbs that burned during the tenancy and the landlord incurred a loss.

Given the light bulbs receipt, I find it reasonable to award the landlord compensation in the amount of \$10.23 to replaced the light bulbs.

As such, I award the landlord \$10.23 in compensation for this loss.

Carpet cleaning

Based on the landlord's undisputed testimony and the report, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit's carpet when the tenancy ended and the landlord incurred a loss.

Given the carpet cleaning invoice, I find it reasonable to award the landlord compensation in the amount of \$110.25 for carpet cleaning.

As such, I award the landlord \$110.25 in compensation for this loss

Painting

Residential Tenancy Branch Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

Based on the landlord's undisputed testimony and the report, I find the tenant breached section 37(2)(a) of the Act by failing to paint the damaged walls and the landlord incurred a loss. I find 8 large nail holes in the living room wall is an excessive number.

Given the painting receipt, I find it reasonable to award the landlord compensation in the amount of \$187.67 for painting.

As such, I award the landlord \$187.67 in compensation for this loss.

Key replacement

Based on the landlord's undisputed testimony and the report, I find the tenant breached section 37(2)(b) of the Act by failing to return all the keys to the landlord when the tenancy ended and the landlord incurred a loss.

Given the keys receipt, I find it reasonable to award the landlord compensation in the amount of \$99.40 for key replacement.

As such, I award the landlord \$99.40 in compensation for this loss.

Filing fee and summary

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

The landlord is authorized to retain the \$547.50 deposit to offset the monetary award.

In summary, the landlord is entitled to:

Expenses	\$
Unpaid rent (April, May, June, July and August 2020 - \$1,095.00 per month)	5,475.00
Cleaning	245.00
Light bulbs	10.23
Carpet cleaning	110.25
Painting	187.67
Key replacement	99.40
Filing fee	100.00
Subtotal	6,227.55
Minus deposit	-547.50
Total monetary award	5,680.05

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$547.50 deposit and grant the landlord a monetary order in the amount of \$5,680.05

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: February 09, 2021

Residential Tenancy Branch