



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-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 section 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to sections 26 and 67;
- an authorization to retain all of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 72;
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. Witness BL for the tenant also attended. 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) via text message. Based on the testimonies I find that each party was served with the respective materials in accordance with section 71(2)(c) of the Act.

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 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 the landlord's obligation to present the evidence to substantiate her claims.

Both parties agreed the tenancy started on May 01, 2020 and ended on August 31, 2020. Rent was \$3,000.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$1,500.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed they attended the move-out inspection and the tenant refused to sign the condition inspection report (the report) because she does not agree with it. A copy of the report was submitted into evidence. The landlord was not able to explain why she did not sign and date the move-out inspection.

The landlord affirmed she did not receive the forwarding address. The tenant stated the forwarding address was sent by text message to the landlord, but she can not remember when the text message was sent.

Both parties agreed August 2020 rent was not paid. The rental unit is a 3-bedroom 2,900 square feet house (the rental unit) and the basement is a rental unit.

The landlord affirmed the rental unit was not clean when the tenancy ended. The toilets, shower, windows coverings and carpet needed to be cleaned. The tenants left some personal belongings. The landlord hired a cleaning company to clean the rental unit for 9 hours. An invoice for \$378.00 was submitted into evidence and 14 photographs showing the rental unit's conditions when the tenancy ended. Both parties agreed the invoice included cleaning for a laundry also used by the basement tenant. The tenant agrees to pay \$200.00 for cleaning.

Both parties agreed the shared driveway fits 9 vehicles, the tenant parked 2 vehicles and the basement tenant parked 1 vehicle, when the tenancy started there was no oil leak stain and when the tenancy ended there were oil leak stains on the driveway.

The landlord stated the oil leak stain was caused only by the tenant's 2 vehicles. The tenant said the basement tenant's vehicle also caused the oil leak stains.

The landlord stated the driveway was sealed just before the tenancy started and the tenant's 2 vehicles leaked oil constantly during the tenancy. The landlord asked the tenant during the tenancy to clean the oil on the driveway and the tenant did not clean it. When the tenancy ended the landlord needed to remove the oil and apply a new sealant. The landlord submitted into evidence invoices for the rental of a high pressure washing machine (\$92.44), the sealant (\$380.76) and the two-day labour service (\$1,312.50).

The service labour invoice indicates a charge of \$700.00 for driveway cleaning and \$550.00 for driveway and front walkway sealing. The landlord is claiming a total amount of \$1,785.70 for the driveway repair, including rental of the necessary machinery, products and labour.

The tenant testified the driveway was not sealed when the tenancy started, if it had been sealed there would be no oil leak damage and the oil leak is regular wear and tear. Witness BL affirmed it is not necessary to have workers for two days to seal the driveway, the landlord could have sealed only the area where the oil leaked and the service labour includes repairs to the front walkway. The tenant offered to clean the driveway but the landlord did not accept it because she had the house for sale and wanted to improve the driveway.

The landlord submitted a monetary order worksheet. The total amount the landlord is asking is \$5,263.70.

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 \$3,000.00 and did not pay rent for 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 \$3,000.00 for August's 2020 rent.

Cleaning

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.

Both parties agreed the rental unit was not clean when the tenancy ended. Based on both parties testimony, the 14 photographs and the invoice, I find it reasonable to award the landlord \$280.00 for cleaning costs.

As such, I award the landlord \$280.00 in compensation for cleaning costs.

Driveway repairs

Section 32(2) of the Act states: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

Based on both parties testimony, I find, on a balance of probabilities, the tenant's 2 vehicles are responsible for oil leaks that caused stains on the shared driveway and the landlord incurred a loss due to the tenant's non-compliance with section 32(2) of the Act. A car constantly leaking oil is not regular wear and tear.

Based on the landlord's convincing and straightforward testimony, I find the driveway was sealed just before the tenancy started.

The landlord failed to prove, on a balance of probabilities, the loss claimed in the amount of \$1,785.70 for the driveway repair, as the invoice submitted indicates the labour was also used to seal the front walkway. As such, I find it reasonable to award the landlord compensation for the driveway based on the invoices total reduced by 30%, thus reducing the landlord's compensation to \$1,249.99 (\$1,785.70 – 30%).

Based on the tenant's convincing and straightforward testimony, I find the basement tenant's vehicle is also responsible for the oil leak stains, as the 3 vehicles shared the driveway. The landlord did not provide documentary evidence that the damage was caused only by the tenant's 2 vehicles. As such, I find the basement tenant's 1 vehicle is responsible for 33% of the damage and further reduce the compensation by 33%. Thus, the landlord is entitled to \$837.49 (\$1,249.99 – 33%)

I award the landlord \$837.49 in compensation for the driveway repairs.

Security deposit

The tenant's testimony regarding the service of the forwarding address was vague. The tenant did not state when he served the forwarding address. I find the tenant did not serve the forwarding address in writing.

Section 38(1) and (6) of the Act states:

- (1)(Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a)the date the tenancy ends, and
 - (b)**the date the landlord receives the tenant's forwarding address in writing,**the landlord must do one of the following:
 - (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.[...]
- (6)If a landlord does not comply with subsection (1), the landlord
 - (a)may not make a claim against the security deposit or any pet damage deposit, and
 - (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the forwarding address was not provided by the tenant in writing, the tenant is not entitled to receive double the security deposit.

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.

Thus, the landlord is authorized to retain the \$1,500.00 deposit to offset the monetary award.

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.

In summary, the landlord is entitled to:

Expenses	\$
August 2020 rent	3,000.00
Cleaning costs and removal of tenant's belongings	280.00
Driveway repairs	837.49
Filing fee	100.00
Subtotal	4,217.49
Minus deposit	-1,500.00
Total monetary award	2,717.19

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,500.00 deposit and grant the landlord a monetary order in the amount of \$2,717.19.

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 02, 2021

Residential Tenancy Branch