



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-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 landlords 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), pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:56 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. Landlords NB (the landlord) and TB attended the hearing and were 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 landlords 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) by registered mail on November 06, 2020, in accordance with section 89(1)(d) of the Act (the tracking number is recorded on the cover of this decision).

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 materials on November 11, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Are the landlords 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 landlords' obligation to present the evidence to substantiate their claims.

The landlord stated the periodic tenancy started on October 01, 2020 and ended on October 28, 2020. Rent was \$1,600.00 per month, due on the first of the month. At the outset of the tenancy a deposit of \$800.00 was collected. The landlords hold the deposit in trust. The tenancy agreement was submitted into evidence.

On October 26, 2020 the tenant emailed the landlord: "I am letting you know that we will be moving out tomorrow."

The landlord affirmed the forwarding address (mentioned on the cover page of this decision) was provided in writing on October 28, 2020. The landlords' application was submitted on November 03, 2020.

The landlord stated the tenant did not pay rent for November 2020. The landlords are claiming rent for November 2020 in the amount of \$1,600.00. The rental unit was re-rented on December 01, 2020.

The landlords are claiming for \$250.00 for cleaning expenses. The landlord affirmed the rental unit was clean when the tenancy started and dirty when the tenancy ended. The landlord stated the tenant left garbage in the rental unit, the cupboards were dirty, the bathroom was dirty, there was food in the fridge and the oven. The tenant abandoned food, cleaning supplies and a coffee maker in the rental unit. The landlord submitted into evidence 12 photographs showing garbage in the rental unit.

The landlord cleaned the 650 square feet one-bedroom rental unit for 4 hours. The landlord is asking for compensation at the hourly rate of \$35.00. The landlord loaded a truck with the garbage and personal items left by the tenant and disposed them in the local dump. The landlord stated she paid a \$50.00 fee to dispose the tenant's belongings and garbage in a landfill and she worked for two hours to bring all the belongings and waste to the landfill. The landlord is asking for compensation at the hourly rate of \$30.00 for the service to remove the tenant's belongings and garbage.

The landlord submitted into evidence a monetary order worksheet. The total amount the landlords are claiming is \$1,850.00.

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

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,600.00 on the first day of the month and the tenant did not provide a one month notice to end tenancy.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. Section 45 of the Act requires the tenant to provide a one month notice to end tenancy:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant is in arrears for the rent of November 2020 in the amount of \$1,600.00.

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.

Based on the landlord's undisputed testimony and the photographs, 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 detailed testimony, I find it reasonable to award the landlord compensation in the amount of \$250.00 for 4 hours of cleaning at \$35.00 per hour, 2 hours to remove the tenant's belongings at \$30.00 per hour and the landfill fee in the amount of \$50.00.

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

Deposit

Section 38(1) of the Act requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on October 28, 2020 and brought an application for dispute resolution on November 03, 2020, within the timeframe of section 38(1) of the Act.

Filing fee and summary

As the landlords were successful in this application, the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, 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, I order the landlords to retain the tenant's deposit of \$800.00 in partial satisfaction of the monetary award granted.

In summary:

Unpaid rent November 2020	\$1,600.00
Cleaning	\$250.00
Filing fee	\$100.00
Minus security deposit	\$800.00 (subtract)
Total monetary award	\$1,150.00

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlords to retain the \$800.00 deposit and grant the landlords a monetary order in the amount of \$1,150.00.

The landlords are provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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 22, 2021

Residential Tenancy Branch