



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on November 08, 2020 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the unit;
- To recover unpaid rent;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenants did not appear. I explained the hearing process to the Landlords who did not have questions when asked. The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords’ evidence. The Landlords testified that the hearing package and evidence were sent by email to the Tenants on November 25, 2020. The Landlords had not submitted evidence of service.

The Landlords had applied for a substituted service order. A decision on this was issued November 24, 2020 and states:

For this reason, I allow the landlord substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by e-mail to each of the tenants at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mails which may include print outs of the sent items, confirmation of delivery receipts, or other documentation to confirm the landlord has served the tenants in accordance with this order. If possible, the landlord should provide read receipts confirming the e-mails were opened and viewed by the tenants.

(emphasis added)

I pointed out the above to the Landlords. The Landlords asked to submit proof of service during the hearing. I gave the Landlords until 4:00 p.m. on the date of the hearing to upload proof of service. The Landlords uploaded an email sent November 25, 2020 to the email address permitted for service in the substituted service decision.

Pursuant to the substituted service decision, and section 71 of the *Residential Tenancy Act* (the “Act”), I am satisfied the Tenants were sufficiently served with the hearing package and evidence on November 28, 2020.

I proceeded with the hearing. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage caused to the rental unit?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Half of September rent	\$1,400.00
2	Cleaning	\$205.80
3	Filing fee	\$100.00
	TOTAL	\$1,705.80

At the hearing, the Landlords advised that they were actually seeking full rent for September.

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2019 and was for a fixed term ending September 30, 2020. Rent was \$2,800.00 per month due on the first day of each month. The Tenants paid a \$1,400.00 security deposit.

The Landlords testified as follows.

The tenancy ended September 14, 2020.

The Tenants did not provide a forwarding address.

They did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

The parties did a “walk around” at the start of the tenancy but a Condition Inspection Report was not completed.

A move-out inspection was not done because the Tenants just left. The Landlords tried contacting the Tenants through email; however, the Tenants did not respond. The Tenants were given two opportunities to do a move-out inspection, one on the RTB form.

When asked about a Notice of Final Opportunity to Schedule a Condition Inspection, it was clear the Landlords were not aware of what this was as they continued to refer to other RTB forms and ask if these were the Notice of Final Opportunity to Schedule a Condition Inspection.

#1 Half of September rent \$1,400.00

The Landlords sought full rent for September and stated that they sought half a month's rent in the Application because they hold the security deposit for the other half.

Landlord A.L. testified as follows. The Tenants signed the tenancy agreement which expired September 30, 2020. The Tenants did not pay September rent.

Landlord P.B. testified as follows. The Tenants told the Landlords at the end of August that they were leaving and not paying September rent. The Landlords received notice from the Tenants August 31, 2020 and the Tenants had already moved out at this point.

The Landlords testified that the rental unit was posted for rent as soon as possible but was not re-rented for September.

#2 Cleaning \$205.80

The Landlords testified as follows. The tenancy agreement required the Tenants to have the rental unit professionally cleaned. The Tenants had not had the rental unit cleaned at the end of the tenancy. The rental unit was dirty at the end of the tenancy as shown in the photos submitted. There was garbage left in the rental unit. The bathroom had to be cleaned. The rental unit was not reasonably clean. The Landlords had a company attend and clean the rental unit.

The Landlords submitted the following evidence:

- An email from the Tenants dated August 31, 2020 stating they had cleaned up and moved out of the rental unit as of August 30, 2020
- Emails between the parties about the end of the tenancy and September rent
- A 10 Day Notice in relation to September rent
- Photos of the rental unit at the end of the tenancy
- An invoice for cleaning services for \$205.80

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I accept the undisputed testimony of the Landlords that the Tenants participated in a “walk around” at the start of the tenancy and therefore find they did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

I do not accept that the Tenants were offered two opportunities to do a move-out inspection, one on the RTB form, as it was clear the Landlords did not know what a Notice of Final Opportunity to Schedule a Condition Inspection was. I find the Landlords would have known what a Notice of Final Opportunity to Schedule a Condition Inspection was if they had provided one to the Tenants. Further, there is no Notice of Final Opportunity to Schedule a Condition Inspection in evidence to show that one was provided to the Tenants. I am not satisfied the Tenants extinguished their rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights to the security deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for unpaid rent.

I accept the undisputed testimony of the Landlords and based on this, as well as the documentary evidence outlined, I make the following findings.

I find the tenancy ended August 30, 2020 when the Tenants vacated the rental unit.

I accept that the Tenants did not provide a forwarding address to the Landlords.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date they received the Tenants' forwarding address in writing. Given the Landlords did not receive a forwarding address from the Tenants, section 38(1) of the *Act* has not been triggered and the Landlords were entitled to claim against the security deposit on November 08, 2020 when the Application was filed.

#1 Half of September rent \$1,400.00

In the Application, the Landlords have sought half of September rent and sought to keep the security deposit towards the amounts outlined in the Application. At the hearing, the Landlords said they were actually seeking full rent for September. I have not considered whether the Landlords are entitled to full rent for September as this is not what is requested in the Application. I find it would be unfair to consider whether the Landlords are entitled to full rent for September when the Tenants could not have been aware of this request based on the Application.

I am satisfied the tenancy agreement was for a fixed term ending September 30, 2020.

Section 45(2) of the *Act* states:

(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

I accept that the Tenants gave notice ending the tenancy on August 31, 2020 and that the Tenants had moved out of the rental unit at this point. I find the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy early.

I accept that the Tenants did not pay September rent and that the rental unit was not re-rented for September. Therefore, I am satisfied the Landlords lost rent for September due to the Tenants' breach.

I accept that the Landlords posted the rental unit for rent as soon as possible and therefore am satisfied the Landlords mitigated their loss.

I am satisfied the Landlords are entitled to \$1,400.00 for loss of rent for September and award the Landlords this amount.

#2 Cleaning \$205.80

Section 37 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...

I accept that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37 of the *Act*. I accept that the Landlords had to hire a cleaning company to clean the rental unit. I accept that the cleaning company cost \$205.80. I find this amount reasonable and award the Landlords this amount.

#3 Filing fee

Given the Landlords were successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords are entitled to the following compensation:

Item	Description	Amount
1	Half of September rent	\$1,400.00
2	Cleaning	\$205.80
3	Filing fee	\$100.00
	TOTAL	\$1,705.80

The Landlords can keep the \$1,400.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$305.80 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$1,705.80. The Landlords can keep the \$1,400.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$305.80. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 24, 2021

Residential Tenancy Branch