



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$19,143 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:01 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing, as did his counsel ("**CS**"). Both were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. 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, CS, and I were the only ones who had called into this teleconference.

On November 18, 2020, the landlord obtained an order that allowed him to serve the tenant substitutionally via email. He served the tenant with the notice of dispute resolution form, a copy of the interim decision granting substituted service, and the supporting evidence package via email on November 20, 2020. The landlord provided copies of the emails sent to the tenant attaching the required documents (the number of attachments necessitated that two emails be sent). I find that the tenant has been served in accordance with the substituted service order.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing, the landlord sought to further amend the application to increase his monetary claim by \$45. The need for this arose from an arithmetical error when calculating the amount of strata charges the tenant is responsible for paying. These charges can clearly be seen on the strata statement of accounts that the landlord submitted into evidence.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the strata charges the landlord is seeking can be readily seen of the strata statements of account (indeed, they are highlighted) and as they total \$45 more than the amount the landlord applied for, I find that the increase to the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to increase the landlord's claim by \$45, from \$19,143 to \$19,188.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$19,188;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his and CS's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting October 20, 2019 and ending October 31, 2021. The rental unit is a strata lot. The tenant signed a Form K Notice of tenant's responsibilities (as required by the *Strata Property Act*) at the start of the tenancy. Monthly rent was \$3,000 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,500 at the start of the tenancy, which the landlord continues to hold in trust for the tenant. The tenant vacated the rental unit around October 10, 2020. He did not provide a forwarding address at the end of the tenancy.

The parties conducted a move-in condition inspection at the start of the tenancy. The landlord entered a copy of the condition inspection report into evidence.

The tenant did not attend the move out inspection that the landlord scheduled on October 1, 2020 (which the tenant had agreed to attend and for which the landlord had issued a Notice of Final Opportunity to Schedule a Condition Inspection). The landlord testified that the tenant appeared to be in the process of moving out when he attended the rental unit to do the inspection.

1. Rent Arrears

The tenant failed to fail any rent from April 2020 to August 2020. The landlord served the tenant with a repayment plan (which was entered into evidence), per *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* on August 26, 2020. The first payment of \$1,500 was due on October 1, 2020.

The tenant failed to make the first payment and has not made any subsequent payments.

The tenant did not pay the rent that was due on September 1, 2020. On September 2, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “**Notice**”). The Notice listed an effective date of September 17, 2020.

The tenant did not pay September arrears within five days of receiving the Notice, or at all. He did not apply to dispute the Notice. Accordingly, the landlord made an application by direct request for an order of possession and a monetary order seeking September rent. On October 20, 2020, the landlord was granted an order of possession (effective two days after being served on the tenant) and a monetary order for \$3,100 (September rent plus the \$100 filing fee) by an RTB adjudicator. The landlord submitted a copy of this decision into evidence.

In the interim period between initiating the Direct Request Proceeding and receiving the October 20, 2020 decision, the tenant stated that he would move out of the rental unit before the end of September.

As stated above, the tenant had not vacated the rental unit on October 1, 2020, when the landlord attended the rental unit to conduct the agreed upon condition inspection.

The landlord seeks a monetary order of \$15,000, representing compensation for unpaid rent for April, May, June, July, and August 2020. He seeks a monetary order of \$3,000 representing loss of ability to earn rent from the rental unit for the month of October 2020 due to the tenant’s failure to vacate it in accordance with the effective date of the Notice.

2. Strata Fines

The Form K signed by the tenant at the start of the tenancy states:

If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a by law or rule, the tenant is responsible and may be subject to penalties, including fines comment denial of access to recreational facilities, and if the strata Corporation incurs costs for remedying a contravention, payment of those costs.

The tenant has caused four charges to be incurred on the landlord's strata account. The tenant failed to pay the \$250 move-in fee at the start of the tenancy. The tenant booked an amenities room in the residential property and failed to pay the \$100 booking fee. The tenant provided the strata with cheques for \$100 on December 3, 2019 and February 7, 2020, but both times the cheques were returned to the strata marked insufficient funds. Per the strata bylaws, the landlord's account was charged an NSF fee of \$31.50 for each bounced cheque. The landlord provided copies of his strata statement of account which showed these four charges, totaling \$413. The landlord seeks repayment of this amount.

3. Damage to Rental Unit

After the tenant vacated the rental unit, the landlord incurred \$775.55 in costs associated with returning the rental unit to a condition suitable for rental. The tenant failed to return the keys for the rental unit, the mailbox, or fobs for the garage. In particular, the landlord had to:

- 1) replace a broken vertical wall towel hanger (\$22.39);
- 2) replace a broken horizontal wall towel hanger (\$39.98 plus tax);
- 3) replace a missing cap on a shower handle (\$9.99 plus tax);
- 4) repair water damage to the bathroom wall (\$15.46 plus tax);
- 5) replace a missing smoke detector (\$162.50);
- 6) replace the main door entrance lock (\$98.70);
- 7) cut new keys to the mailbox and rental unit (\$17.31);
- 8) purchase two fobs for the garage from the strata (\$200); and
- 9) hire a cleaning company to clean the rental unit (\$200).

The landlord submitted receipts or invoices for all of these expenses. The damage to the rental unit (and the fact the keys and fobs were not returned) are recorded on the move out condition inspection report. The landlord provided photographs showing the alleged damage and the condition of the rental unit on October 11, 2020, which reveal that the items are damaged as claimed, and that the rental unit required cleaning after the tenant vacated the rental unit.

Analysis

1. Rent arrears

The tenant is required to pay monthly rent in the amount of \$3,000. I find that the tenant has failed to do this for the months of April to August 2020, inclusive.

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the RTB for a monetary order.

The tenant must repay the arrears owed and he has breached the repayment plan by failing to make any of the required payments. As such, and as the tenancy ended on September 17, 2020, the effective date of the Notice, the tenant cannot rely on the repayment plan to defer his obligation to pay the full amount of arrears owed.

Accordingly, I order that the tenant pay the landlord \$15,000 representing repayment of arrears owed for April to August 2020 (inclusive).

2. Loss of ability to rent rental unit

The tenant did not vacate the rental unit on the effective date of the Notice. Per section 45(5) of the Act, if the tenant does not dispute the Notice or pay the arrears owed within five days of being served with the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

As such, the tenancy ended on September 17, 2020.

I find that by not vacating the rental unit by this date, by failing to vacate it by October 1, 2020, and by leaving in damaged and in the condition described on the move-out condition inspection report, the tenant caused the landlord to be unable to re-rent the rental unit for the month of October and generate income from the rental unit. As such, the landlord is entitled to collect from the tenant an amount equal to the amount of rent it was entitled to generate from the rental unit for the month of October 2020 (\$3,000).

3. Unpaid strata fees

The Form K obligates the tenant to comply with the strata rules and to pay fine pay strata fees and fines. I find that, due to the actions of the tenant, and a failure to comply

with the strata bylaws including failing to pay the move-in fee (\$250 charge), failing to pay for the amenities room (\$100 charge), and by bouncing two cheques (two \$31.50 charges), the landlord's strata account was charged \$413. The tenant must compensate the landlord for these charges.

4. Damage to rental unit

Based on the move out condition inspection report and on the photographs showing the condition of the rental unit after the tenant vacated the rental unit, I find that the tenant caused the following damage to the rental unit:

- 1) removed two towel hangers (vertical and horizontal);
- 2) removed a cap on a shower handle;
- 3) caused water damage to the bathroom wall which necessitated that the wall be repainted; and
- 4) removed the smoke detector.

Additionally, I find that the tenant failed to clean the rental unit prior to vacating. I accept the landlord's testimony that the tenant failed to return the mailbox keys, the keys to the rental unit, and the parking lot fobs.

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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.

By failing to clean the rental unit, repairing the damage caused as described above, and returning the keys and fobs, I find that the tenant breached section 37(2) of the Act.

I accept that the landlord incurred costs as set out above, in the combined amount of \$775.55. I find these costs to be reasonably incurred.

I order the tenant to pay the landlord \$775.55.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover his filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$17,788.55, representing the following:

Description	Amount
Arrears (April to August)	\$15,000.00
Loss of October rent	\$3,000.00
Strata fines	\$413.00
Damage to rental unit, replacement of keys, cleaning	\$775.55
Filing fee	\$100.00
Security deposit credit	-\$1,500.00
Total	\$17,788.55

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: March 11, 2021

Residential Tenancy Branch