



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 26 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord stated that the tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on December 5, 2020, by way of registered mail to the tenants' residential address provided by a skip tracing company to the landlord on November 23, 2020. The landlord provided a copy of a letter and invoice from the skip tracing company, stating that the tenants were living at the property. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on December 10, 2020, five days after each of their registered mailings, to the tenants' residential address.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord chose to proceed with the hearing and did not make any adjournment or accommodation requests.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on September 1, 2020 and ended on September 30, 2020, when the tenants abandoned the rental unit. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,825.00 was payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenants' security deposit. The tenants did not provide a forwarding address to the landlord.

The landlord's application to retain the tenants' security deposit was filed on November 23, 2020.

According to his application, the landlord seeks a monetary order of \$3,034.75 plus the \$100.00 application filing fee.

The landlord testified regarding the following facts. There were only two small pets allowed in the rental unit, as per the tenancy agreement. The landlord saw an 80 lb dog at the rental unit, so he told the tenants that no big dogs or third pet was allowed. The male tenant told the landlord that he would leave and could do so whenever he wanted. The tenants signed a mutual agreement to end tenancy to vacate by October 31, 2020. The landlord asked the tenants to pay the full security deposit plus the October 2020 rent, but they failed to do so and sent a text message to the landlord saying, "good luck" and left the rental unit. The landlord tried to re-rent the unit for October 15, 2020.

There were dog and cat feces all over the rental unit and other tenants complained about the smell to the landlord. The landlord gave a cheque to someone to clean the place and disinfect but there is still a bad stench of feces. The landlord submitted photographs, which show a bed torn apart, which is not the condition that the unit was rented to the tenants. The landlord is pursuing the tenants “out of principle.”

Analysis

During the hearing, I notified the landlord that he was required to present his application, including all claims and evidence.

The following Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) are applicable to this proceeding and state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not sufficiently present his claims or evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During the hearing, the landlord failed to go through specific claims and the amounts for each claim. This hearing lasted 26 minutes, so the landlord had ample opportunity to present this application, as the tenants did not appear at this hearing.

During the hearing, I notified the landlord about the below test. Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

The landlord did not review any specific claims or monetary amounts, as noted in the monetary order worksheet that he provided for this hearing. He did not even go through this worksheet during the hearing. According to the landlord's monetary order worksheet, he claimed the following amounts, as noted below.

I dismiss the landlord's application of \$1,825.00 for October 2020 rent, without leave to reapply. I find that the tenants did not live in the rental unit during October 2020, as the landlord confirmed that they vacated the rental unit on September 30, 2020. I find that the landlord did not indicate if or when the unit was re-rented, or if or when any advertisements were posted, inquiries were answered, or showings were done. The landlord did not go through any documents relating to this claim during the hearing.

I dismiss the landlord's application of \$200.00 for painting, \$300.00 for cleaning, \$200.00 for sanitizing and \$200.00 for garbage removal, totalling \$900.00, without leave to reapply. The landlord did not indicate what work was done, when the work was done, who it was done by, how many people did the work, what the rate was per hour or per task, or other such information. The landlord simply provided a cheque addressed to an individual for \$900.00 for "cleaning & maint" without the rental unit address on it, to show where the work was done. The landlord did not provide a copy of the cancelled cheque or bank statement to show that the cheque was cashed. The landlord did not provide any invoices or receipts for these claims.

The landlord did not complete move-in or move-out condition inspection reports with the tenants, to show the condition of the rental unit at the beginning or the end of the tenancy. The landlord only submitted photographs, which he did not indicate when they were taken, nor did he go through any of these photographs during the hearing, aside from mentioning their existence.

I dismiss the landlord's application of \$309.75 for skip search services, without leave to reapply. The landlord only provided an invoice with a balance due, for this cost. He did not provide a receipt, bank statement or other such document to show that this invoice was actually paid by him. The landlord was not required to retain a skip trace company to locate the tenants, but chose to do so, in order to pursue this application.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenant's security deposit of \$300.00. Over the period of this tenancy, no interest is payable on the deposit.

The landlord's right to retain the tenants' security deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenants are entitled to the return of their full security deposit of \$300.00 from the landlord. The tenants are provided with a monetary order for same. Although the tenants did not apply for their security deposit return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$300.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: March 16, 2021

Residential Tenancy Branch