



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to applications by the landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for unpaid rent pursuant to section 67 of the *Act*;
- an order to retain the tenant’s pet and security deposits pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlords N.O. and B.O. attended the hearing by way of conference call which lasted approximately 15 minutes. The landlords were given full opportunity to be heard, to present their evidence and to make sworn submissions.

The landlords gave undisputed testimony that a copy of the Application for Dispute Resolution hearing package, as well as the evidentiary package were sent to the tenant by way of Canada Post Registered Mail on December 12, 2020. A copy of the Canada Post tracking number was provided to the hearing by the landlords. The landlords testified that this package was marked as received by Canada Post on December 16, 2020. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant is deemed served with the dispute resolution hearing and evidentiary package.

Issue(s) to be Decided

Can the landlords recover a monetary award?

Can the landlords retain the security deposit?

Are the landlords entitled to a return of the filing fee?

Background and Evidence

The landlords testified that the tenancy began on December 1, 2019 and was a fixed-term tenancy set to expire on April 1, 2021. The landlords discovered the property abandoned by the tenant on approximately September 14, 2020. Monthly rent was \$1,500.00 and two deposits of \$750.00 each (pet & security) were collected at the outset of the tenancy and continue to be held in trust by the landlords.

The landlords are seeking a monetary award of \$6,878.94 as noted below:

Amount	Item
Carpet Cleaning	\$84.00
Paint and Supplies	174.67
Wall repair materials/items	72.16
Bathroom and kitchen cleaning	100.05
Common area keys	40.51
Door keys	7.56
Building Fobs	200.00
Unpaid Rent	6,100.00
Return of Filing Fee	100.00
Total =	\$6,878.95

I note the landlords' calculation was off by .01 cents and will therefore consider the application under the correct figure of \$6,878.95.

During the hearing the landlords explained that the tenant had failed to pay partial rent for July 2020 (\$400.00) and August 2020 (\$1,200.00) and had not paid rent in its entirety for September, October and November 2020. The landlords said they had been contacted by the tenant in late August 2020 and had understood from their conversation that the tenant would vacate the property at the end of September 2020. Following this conversation, the landlords attempted to contact the tenant regarding steps that could be taken to show the unit to prospective renters. The landlords testified they received no response from the tenant and attended the property on September 14, 2020 to discover it abandoned.

The landlords state the figure cited above include costs associated with replacing keys and fobs that were not returned, cleaning the carpet after "significant damage" was discovered and, painting and repairing of walls. Further, the landlords enlisted a professional cleaner to assist them following the tenant's departure.

The landlords said the property could not be re-rented until December 1, 2020 due to the number of repairs and cleaning that was required in the unit after the tenant abandoned the property and because of the steps they undertook to screen tenants and process applications. The landlords detailed the efforts they took to find a new tenant including posting the unit on Craigslist, Facebook marketplace and Kajiji.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlords’ undisputed testimony that *reasonable* efforts were made to re-rent the unit as quickly as possible by; posting it on various local websites after cleaning and repairs were made to the unit and the processing of various applications for tenancy. No evidence was presented at the hearing or submitted by the tenant to rebut the landlords’ testimony and evidence. I will therefore award the landlords all unpaid rent for October and November 2020.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. As per *Policy Guideline #16* the claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a monetary award.

I accept the landlords' undisputed testimony that partial rent was unpaid for July and August 2020, and that no rent was paid for September 2020. Pursuant to section 7 & 67 of the *Act*, I award the landlords the entire amount sought for unpaid rent.

The remainder of the landlords claim concerns expenses related to the replacement of keys/fob, along with painting, cleaning and minor repairs to the unit.

Section 37(2)(b) of the *Act* states, "When a tenant vacates a rental unit, the tenant must 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." I accept the landlords undisputed testimony that no keys or fobs were returned. Pursuant to section 37(2)(b) and section 67, I therefore award the landlords the entire amount sought for the replacement of these items.

The landlords detailed the repairs and cleaning that were required in the suite following the tenant's abrupt departure. I accept the landlords undisputed testimony that the unit required carpet cleaning, professional cleaning and repairs to the walls. I decline to award any amount related to the repainting of the suite as the paint was beyond the 4-year timeline associated with it's useful life as provided in *Residential Tenancy Policy Guideline #40*.

Using the offsetting provisions contained in section 72 of the *Act* I allow the landlords to retain both deposits in partial satisfaction for the monetary award granted. As the landlords were successful in their application, they may recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order of \$5,204.28 in favour of the landlords as follows:

Item	Amount
Carpet Cleaning	\$84.00
Wall repair materials/items	72.16
Bathroom and kitchen cleaning	100.05
Common area keys	40.51
Door keys	7.56
Building Fobs	200.00
Unpaid Rent	6,100.00
Less Pet and Security deposit	(-1,500.00)
Return of Filing Fee	100.00

Total =	\$5,204.28
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The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. 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: March 26, 2021

Residential Tenancy Branch