



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNDCT, CNR
For the landlord: MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit under Section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:46 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. The landlord, represented by property manager SJ (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. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed he understands it is prohibited to record this hearing.

Preliminary Issue – Tenant’s application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant’s application dismissed without leave to reapply.

Preliminary Issue – Service of the landlord’s application

The landlord testified the tenant was evicted by a bailiff on January 15, 2021. The landlord was at the rental unit when the tenant was evicted, and he observed the tenant writing his forwarding address on a piece of paper and delivering this paper to the bailiff. The bailiff emailed the landlord on January 18, 2021 informing the tenant’s forwarding address: “[tenant] stated his forwarding address is [redacted]”

I accept the landlord’s testimony that the tenant was served with the application and the evidence (the materials) by registered mail on January 29, 2021 sent to the address informed by the bailiff, in accordance with section 89(2)(b) of the Act (the tracking number and the address are 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 February 03, 2021, 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.

Preliminary Issue – Prior application filing fee

The landlord obtained a monetary order in the amount of \$100.00 for the recovery of the prior application filing fee (the file number is recorded on the cover page of this decision). The landlord applied to obtain a new monetary order for the recovery of the same filing fee in this application.

The landlord request for an authorization to recover the filing fee for the prior application is a matter already decided upon and I decline to hear it.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's security deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 22, 2019 and ended on January 15, 2021. Monthly rent was \$1,620.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$810.00 was collated and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord testified the parties conducted a move-in inspection at the outset of the tenancy. The landlord offered the tenant more than two opportunities to schedule a move-out inspection by email and text messages. The tenant did not attend the move-out inspection and the landlord conducted it without the tenant on January 17, 2021. The landlord filed this application on January 27, 2021.

The landlord stated the tenant did not pay August's 2020 rent balance in the amount of \$230.50 and did not pay rent in September, October, November and December 2020. The landlord is claiming for August's 2020 rent balance and rent due in September, October, November and December 2020 the total amount of \$6,710.50. The landlord submitted a ledger into evidence.

The landlord is seeking compensation in the amount of \$400.00 for two strata fines. The landlord submitted into evidence two letters sent by the strata on November 19, 2020

indicating the tenant received two fines of \$200.00 each for parking violations on September 18 and October 16, 2020.

The landlord testified the tenant signed a form K when he signed the tenancy agreement. The form K indicates the tenant agrees to comply with the strata bylaws and to pay the fines imposed by the strata.

The landlord submitted into evidence a monetary order worksheet dated January 27, 2021 indicating a claim in the total amount of \$7,210.50.

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 the case is on the person making the claim.

Move-out inspection

Section 35 of the Act states:

(1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3)The landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5)The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

(emphasis added)

Regulation 17 states:

(1)A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2)If the tenant is not available at a time offered under subsection (1),

(a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(emphasis added)

Based on the landlord's undisputed testimony, I find the landlord did not serve the tenant the notice of final opportunity to schedule a condition inspection (RTB form 22), as he offered the tenant opportunities to schedule a move-out inspection by email and text messages. Thus, the landlord did not comply with Regulation 17(b) and section 35(2) of the Act.

Section 36(2)(a) of the Act states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 35 (2)

(emphasis added)

As the landlord did not comply with section 35(2) of the Act, I find the landlord extinguished his right to claim against the security deposit, per section 36(2)(a) of the Act.

Security deposit

Section 38(1) of the Act requires the landlord to either return the tenant's 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 forwarding address was provided in writing on January 18, 2021 and the tenancy ended on January 15, 2021. The landlord retained the security deposit in the amount of \$810.00.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the security deposit and did not return the security deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit they retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

[...]

if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to \$1,620.00 (double the security deposit of \$810.00).

Unpaid rent

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,620.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony and the ledger, I find the tenant is in rental arrears in the amount of \$6,710.50 for the balance of August 2020 (\$230.50) and September to December 2020 (\$1,620.00 per month). I award the landlord \$6,710.50 for unpaid rent.

Strata fines – parking

I accept the landlord's uncontested testimony and the two strata letters that the tenant received two strata fines for parking violations in the total amount of \$400.00.

Section 1 of the Act states:

"tenancy agreement" means an agreement, **whether written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(emphasis added)

I find the form K is an amendment to the tenancy agreement, per section 1 of the Act
I find the tenant breached the tenancy agreement addendum by not paying the two strata fines and the landlord incurred a loss of \$400.00.

As such, I award the landlord \$400.00 in compensation for this loss.

Filing fee and summary of the landlord's award

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee for this application.

In summary:

Item	Amount \$
Balance of August 2020 rent	230.50
September to December 2020 rent (\$1,620.00 per month)	6,480.00
Strata fines	400.00
Filing fee	100.00
Total	7,210.50

Set-off

The tenant is awarded \$1,620.00. The landlord is awarded \$7,210.50.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
2. 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.

In summary:

Award for the tenant	\$1,620.00
Award for the landlord	\$7,210.50
Final award for the landlord	\$5,590.50

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$5,590.50.

The landlord is 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: May 10, 2021

Residential Tenancy Branch