



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:52 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agent MB (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.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on January 19, 2021, in accordance with section 89(1)(c) of the Act (the tracking numbers 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 tenants are deemed to have received the materials on January 24, 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 respondents.

Preliminary Issue – Security Deposit

The landlord affirmed the tenant authorized him in writing to retain the full amount of the deposit for compensation for damages.

Based on the landlord's uncontested testimony, I find the tenant authorized the landlord in writing to retain the deposit, per section 38(4) of the Act.

The application for an authorization to retain the deposit is moot since the tenants previously authorized the landlord in writing to retain the full amount of the deposit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an authorization to retain the deposit.

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 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 01, 2019 and ended on January 28, 2021. Monthly rent was \$2,900.00, due on the first day of the month. At the outset of the tenancy the landlord collected a deposit of \$1,400.00. The tenancy agreement was submitted into evidence:

24. ARPETS AND WINDOW COVERINGS. The tenant may not replace any window covering supplied by the landlord. At reasonable intervals the tenant must clean carpets and window coverings provided by the landlord, preferably by a professional company. Regardless of the length of the tenancy, if the carpets and/or window coverings were new or professionally cleaned at the beginning of the tenancy, the tenant must pay for their professional cleaning at the end of the tenancy.

[...]

49. Carpets to be professionally cleaned at tenant's expense.

The landlord stated the parties conducted a move-out inspection and the tenants did not provide their forwarding addresses.

The landlord is claiming for unpaid rent from April 2020 to January 2021 in the amount of \$27,800.00. The landlord testified the tenants paid \$300.00 on May 08, June 01, August 14 and 19, 2020. The landlord submitted into evidence a ledger indicating the total amount of rental arrears is \$27,800.00.

The landlord is claiming for compensation in the amount of \$315.00 for carpet cleaning. The landlord said the carpet was professionally cleaned when the tenancy started and the tenants did not clean the carpet when the tenancy ended. The landlord submitted a carpet cleaning receipt in the amount of \$315.00. The rental unit is a 4-bedroom, 2,100 square feet townhome.

The landlord submitted into evidence a monetary order worksheet dated January 16, indicating a claim in the total amount of \$28,115.00.

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.

Unpaid rent

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$2,900.00 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, the tenancy agreement and the ledger, I find the tenants are in rental arrears in the amount of \$27,800.00 for the balance of April 2020 rent (\$1,700.00), and May to December 2020 and January 2021 rent (\$2,900.00 per month x 9 months). I award the landlord \$27,800.00 for unpaid rent.

Carpet cleaning

I accept the landlord's uncontested testimony that the rental unit's carpet was professionally cleaned when the tenancy started and the tenants did not clean the carpet when the tenancy ended.

Based on the landlord's uncontested testimony, the tenancy agreement and the receipt, I find the tenants breached sections 24 and 49 of the tenancy agreement by not professionally cleaning the carpet and the landlord suffered a loss in the amount of \$315.00.

As such, I award the landlord \$315.00 in compensation for this loss.

Filing fee and summary

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

In summary:

Item	Amount \$
Balance of unpaid rent April 2020	1,700.00
Unpaid rent May to December 2020 and January 2021 (\$2,900.00 per month)	26,100.00
Carpet cleaning	315.00
Filing fee	100.00
Total:	28,215.00

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$28,215.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 25, 2021

Residential Tenancy Branch