Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westend Rental Solutions Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-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 sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on April 19, 2021 and adjourned to August 17, 2021 due to time constraints. This decision should be read in conjunction with the Interim Decision arising out of the April 19, 2021 hearing.

Both parties attended the hearing on April 19, 2021. The landlord was represented by agent SC. Only SC attended the hearing on August 17, 2021. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Residential Tenancy Branch emailed both parties the notice of hearing for the August 17, 2021 hearing on April 21, 2021 using the email addresses provided by the parties on April 19, 2021.

At the outset of the hearings the attending parties affirmed they understand it is prohibited to record this hearing and that when one person is speaking, the other can not interrupt.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service

The landlord served the application and the evidence (the materials) by registered mail on February 03, 2021 to the tenant's forwarding address recorded on the cover page of this decision. The tenant confirmed receipt of the materials.

The landlord affirmed she served a second evidence package by registered mail on March 29, 2021 containing the monetary order worksheet indicating a claim in the total amount of $13,225.00. Both packages were mailed to the tenant's forwarding address. The tracking number of the second package is recorded on the cover page of this decision. The tenant stated she did not receive the second evidence package.

Based on the landlord's convincing testimony and tracking number, I find the landlord served the second evidence package in accordance with section 89(1)(d) and Rule of Procedure 3.14. The tenant is deemed served the second evidence package on April 03, 2021, per section 90 (a) of the Act.

Preliminary Issue – Deposits

Both parties agreed there was a Residential Tenancy Branch decision (the prior decision) authorizing the landlord to retain the deposit.

Thus, the landlord's application for an authorization to retain the deposit is *res judicata* – 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 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 parties, 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 parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from February 07, 2020 to February 28, 2021. The tenant vacated the rental unit on November 10, 2020. Monthly rent of $5,450.00 was due on the first day of the month. The tenancy agreement was submitted into evidence. The rental unit is a house containing a basement suite and an upper suite. The tenant rented and occupied both suites.

The tenant confirmed receipt of a one month notice to end tenancy for cause (the one month notice) in September 2020 and submitted an application for the cancellation of the one month notice. The landlord submitted two applications for monetary orders for unpaid rent in October and November 2020. The three applications were heard together on December 11, 2020 and the prior decision was rendered on December 14, 2020, ordering the tenant to pay rent for April and November 2020. This application was submitted on December 10, 2020.

The tenant affirmed she informed the landlord that she vacated the rental unit on November 10, 2020. The landlord stated the tenant did not inform that she vacated the rental unit on November 10, 2020.

Both parties conducted a move-out inspection on December 17, 2020 and the tenant returned the rental unit’s keys on that date. A copy of the condition inspection report (the report) was submitted into evidence. It indicates both parties conducted the move in inspection on February 07, 2020 and the move out inspection on December 17, 2020.

The tenant checked the box “I agree that this report fairly represents the condition of the rental unit” on February 07, 2020. The tenant did not check the boxes “I agree that this report fairly represents the condition of the rental unit” or “I do not agree that this report fairly represents the condition of the rental unit for the following reasons” on December 17, 2020 because she was on a hurry. The tenant testified that she does not agree that the move-out report represents the condition of the rental unit on December 17, 2020.

The move-out report indicates: “End of tenancy: cleaning (floor and walls), wall repaint, floor painting, garbage and dryer removal, blinds and cabinet repair, carpet wash”.

The landlord said she started advertising the rental unit as two rental suites on November 15, 2021. Later the landlord affirmed she only started advertising the upper suite on December 15, 2021 asking for $3,300.00. The landlord submitted into evidence an advertisement posted on November 23, 2020 for the upper suite indicating monthly rent of $3,400.00. The landlord stated she lowered the amount of rent to $3,000.00 on January 15, 2021 and further lowered the amount of rent to $2,750.00 on January 23, 2021.

The landlord re-rented the basement suite on December 01, 2020 for $2,150.00 and the upper suite on May 01, 2021.

The landlord is claiming for loss of rental income for the upper suite for December 2020, January and February 2021 in the total amount of $9,900.00 ($3,300.00 per month).

The landlord is claiming for $350.00 for cleaning expenses, as the tenant did not clean the rental unit when the tenancy ended. The landlord paid $350.00 for three cleaning contractors to clean the 1,700 square feet, 5-bedroom rental unit for 12 hours.

The landlord is claiming for $350.00 for removing garbage and a dryer abandoned by the tenant in the backyard. The landlord submitted into evidence eight photographs showing garbage in the backyard. The tenant testified it was a mistake to abandon garbage and a dryer in the backyard.

The landlord is claiming for $1,800.00 for repairs, as the tenant damaged the rental unit. The landlord submitted into evidence a receipt indicating a total amount of $1,800.00 for the following repairs:

- “Door frame repair & painting: $200”. The landlord said the tenant damaged the bedroom door frame and submitted a photograph showing a damaged door frame.
- “Cabinet & window screen repair: $150”. The landlord affirmed the tenant damaged the kitchen cabinets and the bedroom windows coverings.
- “Sanitation ($150) + waterproofing ($200) + painting: $350”. The landlord stated the tenant probably left the window opened and the rain damaged the floor.
- “Hallway wall repair: $300”. The landlord testified the tenant damaged the bedroom and hallway walls.
- “Glass sliding door replace. 2nd hand door & frame + painting. $200 + $450 + $150: $800”. The landlord said the tenant damaged the kitchen glass door and submitted a photograph showing a damaged kitchen glass door.

The tenant affirmed the repair expenses the landlord is claiming are wear and tear.

The landlord is claiming for $525.00 for the basement door repair, as the tenant removed a door from the basement suite. The landlord stated she did not indicate in the move-out report that the basement door was missing because she did not notice the missing door during the move-out inspection. The landlord submitted an invoice for $525.00 indicating “Basement door missing. Frame body damaged. Door + frame replacement + locks + hinges. Labour and material incl.”

The landlord is claiming for $300.00 for professional carpet cleaning, as the tenant did not clean the carpet when the tenancy ended. The tenant testified that it is a landlord's obligation to pay for professional carpet cleaning.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Loss of rental income

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term from February 07, 2020 to February

28, 2021, and the tenant ended the tenancy early on November 10, 2021, contrary to section 45(2)(b) of the Act:

> (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a)is not earlier than one month after the date the landlord receives the notice,
>
> **(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy,** and
>
> (c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (emphasis added)

I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on February 28, 2021, the landlord incurred a loss of rental income from December 01, 2020 to February 28, 2021.

Based on the advertisement posted on November 23, 2020, I find the landlord was aware on November 23, 2020 that the tenant moved out of the rental unit.

Residential Tenancy Branch Policy Guideline 3 (issued in June 2004) sets conditions for loss of rental income claims. It states:

> **If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant while the tenant remains in possession of the premises is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement.** However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.

> The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.
> […]
> In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.
>
> (emphasis added)

Further to that, Policy Guideline 5 states:

> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.
> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.
> C. WHEN A NOTICE TO END TENANCY IS GIVEN
> If a landlord issues a notice to end tenancy and is entitled to claim compensation for lost rental income, the landlord has a duty to minimize the loss by attempting to rent out the rental unit or site once the time limit for the tenant to dispute the notice expires.
> If a tenant disputes the notice, the landlord is obligated to attempt to rent the unit or site after:
> • the date the decision or order is received, and the time limits for a review application have passed; or,
> • if the tenant applies for a review consideration of the decision or order, the date the landlord receives the review consideration decision.

I find the landlord did not provide notice to the tenant that she intended to claim for loss of rental income when she served the one month notice. This application was submitted after the tenant moved out. I find that the two applications filed by the landlord claiming for unpaid rent due in April and November 2020 are not notice of the landlord's intention of claiming for loss of rental income, as these applications were not claiming for loss of rental income.

Thus, I dismiss the landlord's claim for loss of rental income.

Cleaning expenses

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

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlords' undisputed convincing testimony, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended and the landlord incurred a loss in the amount of $350.00.

I award the landlord compensation in the amount of $350.00 for cleaning expenses.

Removal of garbage and a dryer

The tenant is responsible for removing garbage and personal appliances from the rental unit when the tenancy ends, per section 37(2)(a) of the Act.

Based on the undisputed landlord's testimony, I find, on a balance of probabilities, the tenant breached section 37(2)(a) of the Act by failing to remove the garbage and a dryer from the rental unit and the landlord incurred a loss of $350.00 because of the tenant's non-compliance with the Act.

As such, I award the landlord $350.00 for the removal of garbage and a dryer.

Repairs

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

Residential Tenancy Branch Policy Guideline 1 states:

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the landlord's testimony, the photographs and the receipt submitted into evidence, I find the tenant breached section 32(3) of the Act by failing to repair the bedroom door frame, the kitchen cabinets, the windows coverings and the kitchen glass door damaged during the tenancy and the landlord suffered a loss of $1,150.00. I find these damages are not wear and tear but caused due to deliberate damage or neglect by the tenant.

I find the landlord's testimony about floor and walls damage was vague and non-convincing. Thus, I find the landlord did not prove, on a balance of probabilities, that the tenant damaged the floor and walls.

As such, I award the landlord $1,150.00 for repairs.

Basement door repair

Regulation 21 states:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental

> unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the testimony of the landlord does not outweigh the evidentiary value of the signed report. Based on the report, I find the landlord did not prove, on a balance of probabilities, that the tenant failed to comply with the Act by damaging the basement door.

I dismiss the landlord's claim for compensation.

Carpet cleaning

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the testimony offered by both parties, I find the tenancy lasted less than one year. The tenancy agreement does not indicate that the tenant is responsible for professional carpet cleaning at the end of the tenancy. The landlord did not prove, on a balance of probabilities, that the tenant breached the tenancy agreement or the Act.

I dismiss the landlord's claim for professional carpet cleaning.

Filing fee and summary

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

In summary:

Item	**$**
Cleaning	350.00
Removal of garbage and a dryer	350.00
Repairs	1,150.00
Filing fee	100.00
Total	**1,950.00**

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of $1,950.00.

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: August 24, 2021

Residential Tenancy Branch