Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlords' application and evidence. The landlords testified that they were served with tenant's evidentiary materials, with the exception of the photos. As the photos were not served in accordance with section 88 of the *Act*, this portion of the tenant's evidence will be excluded. I find the landlords served with the remainder of the tenant's evidence package in accordance with section 88 of the *Act.*

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for money owed or losses?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 24, 2020, and was to end on June 1, 2021. The tenant out on March 16, 2021 after the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on March 3, 2021. Monthly rent was set at $1,700.00, payable on the first of the month. The landlords collected a security deposit in the amount of $850.00, which the landlords still hold. The tenant provided their forwarding address to the landlords on March 6, 2021 and shown by the email evidence. The landlords filed their application for dispute resolution on March 24, 2021.

The landlords are seeking the following monetary orders:

Item	**Amount**
Unpaid rent for March 2021	$1,700.00
Loss of Rent – April & May 2021	3,400.00
Strata Fine	100.00
Cleaning Services	617.40
Replacement Mailbox keys	29.00
Reimbursement of $100.00 paid for bathroom fan repair	100.00
Painting Products	11.48
Paint	75.96
Gas Receipt	52.36
Gas	76.00
Filing Fee	100.00
Total Monetary Order Requested	$6262.20

The landlords testified that although the tenant believes that they had sent the March 2021 rent by electronic transfer, the landlord did not receive this payment. The landlords note that the email address used by the tenant for the payment is incorrect. The landlords submitted a copy of their banking statement which shows rent payments made for the period of May 1, 2020 through to March 18, 2021. The landlords also note that the receipt submitted in the tenant's evidence contains a misspelling in the landlords' email address where the letter "t" is used instead of the letter "l". The tenant

responded that the payments were automatic, and March 2021 rent was sent on February 25, 2021. The tenant testified that the landlords had several email addresses, and if that payment was not receipted, the tenant would have received a response confirming that.

The landlords are also seeking a monetary order for lost rental income for the remaining months of the fixed-term tenancy. The landlords testified that the tenant moved out instead of disputing the 10 Day Notice, or paying the outstanding rent, and ended the tenancy early. The landlords testified that since they were residing in a different city, and due to pandemic, the landlords had decided to list the home for sale instead of re-renting the rental unit. The landlords confirmed that the home was listed for sale in April 2021, and sold on June 7, 2021.

The landlords are also seeking reimbursement of the strata fine in the amount of $100.00, which was assessed against the unit, and was paid by the landlords. The tenant disputes being responsible for the bylaw infraction, which involved the tenant allegedly driving away before waiting for the garage door to close. The landlords responded that they were provided with a photo of the tenant leaving while the garage was still open, and that the tenant did not inform the landlords of the infraction until after the tenant had moved out. The tenant disputes the reliability of the video, and states that the angle the video was taken from does not show what had really happened.

The landlords are seeking reimbursement of the cost of replacing the mailbox keys. The tenant testified that he had no choice but to drop off the keys in the strata office as the landlords were not on site. The landlords testified that they did not pre-arrange for the tenant to return the keys this way, and as a result had to request replacement keys.

The landlords are also seeking reimbursement of the losses associated with the tenant’s failure to leave the home in reasonably clean and undamaged condition. The landlords testified that the tenant failed to meet for a move-out inspection, and that extensive cleaning was required due to the condition the tenant left the rental unit in. The landlords testified that the baseboards were absolutely filthy, and that they were unable to clean them. The landlords testified that the EM and JR attended the move-out inspection, which the landlords originally suggested for March 19, 2021. The landlords testified that the tenant requested March 16, 2021, which was accommodated by the landlords, but tenant failed to respond to the Notice of Final Inspection.

JR testified in the hearing that the rental unit was in very good condition when the tenant moved in on May 24, 2020, and as show on the move-in inspection report. JR

testified that the rental unit was in a bad state with obvious damage and dirt. The landlords submitted photos, videos, and well as copies of the inspection reports to support their claim, as well as invoices and receipts. The landlords testified that the floor had a wax-like substance on it, and that dog hair was found everywhere.

The landlords also testified that they had reimbursed the tenant $100.00 during the tenancy for repairs to the bathroom fan, but upon move-out, the tenant had removed the fan. The landlords testified that due to the various damage to the walls including nail holes and spills, they had to repaint the entire rental unit.

Lastly, the landlords are seeking reimbursement of the gas used for travelling in order to deal with the issues.

The tenant responded that they had proposed a move-out inspection date to the landlords, but they responded that they were unable to make that date as they resided out of town. The tenant testified that they were not given a fair opportunity to attend the inspection as by the time the landlord agreed to change the date, the tenant had already been scheduled for work, and could not longer make the original proposed date.

The tenant disputes leaving the rental unit in unclean or damaged condition, and testified that the damage referenced was regular wear and tear. The tenant testified they did not own a dog, and suggested that the dog hair might have been from the previous tenant. The tenant testified that repainting the entire unit was not required, and the landlords' choice to do so.

The tenant also disputes damaging the bathroom fan, and testified that they had simply left the cover off to show the landlords the condition of the fan. The landlords questioned why the tenant felt the need to do this if the fan was in working order.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

> **44** (1) A tenancy ends only if one or more of the following applies:
>
> (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:…
>
> (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;…

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

> **45** (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.

In this case, it is clear that the tenant moved out before the last date of the fixed-term agreement, and therefore the tenant did not comply with the *Act* in ending this fixed term tenancy. However, I must still consider whether the landlords had fulfilled their obligation to mitigate the losses claimed.

Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation[2]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

In this case, the landlords were forthright about the fact that they decided to sell the home instead of attempting to re-rent it. Despite the fact that the tenant did not stay until the end of the fixed-term tenancy, the landlords did not attempt to re-rent the rental unit in order to recover their losses for the months of April and May 2021. I am not satisfied that the landlords had fulfilled their obligations to mitigate the tenant's exposure to the landlords' monetary losses as is required by section 7(2) of the *Act*, and therefore the landlords' claim for lost rental income is dismissed without leave to reapply.

The landlords are also seeking a monetary order for unpaid rent for the month of March 2021. It is disputed by both parties as to whether payment was made, which is normally made by way of electronic transfer. In light of the evidence before me, although I am satisfied that the tenant did attempt to pay the landlords by way of electronic transfer, the email address used did not match the one confirmed in the hearing as the one normally used by the landlords. Furthermore, I find that if the payment was accepted by the landlords and cleared by the bank, the tenant would not have had difficulty obtaining confirmation from their bank that the payment was received and accepted. Although I do not doubt that the tenant did send the payment, I find that an error had occurred where the payment was not sent to the proper email address, and consequently not received by the landlords. I find that the tenant did not provide sufficient evidence to support that they had re-sent the payment, nor that the payment was received by the landlords for the month of May 2021. Accordingly, I find that the March 2021 rent remains unpaid, and I allow the landlords a monetary order for March 2021 rent.

In consideration of the landlords' claim for the cost of new keys, I find that the tenant had returned the keys in a manner that was not mutually agreed upon, which costs the landlords a monetary loss in order to obtain new keys. Accordingly, I allow the landlords' claim for new mailbox keys.

The tenant disputed the $100.00 strata fine, which the tenant felt was unfairly assessed. I find that the tenant had the right to respond and dispute the complaint before this fine

was paid by the landlords. I am not satisfied that the tenant was afforded this option, which was his right. Accordingly, I dismiss the landlords' claim to recover $100.00 from the tenant without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 35 and 36 of the *Act* set out the requirements for a move-out inspection. Section 35(2) of the Act requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

Two opportunities for inspection

> ***17*** *(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.*
>
> *(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

In this case I find that the landlords failed to provide the tenant with the proper opportunity to attend a move-out inspection by providing the tenant with a notice in the approved form.

Based on the evidence and testimony before me, I find that the landlords did not provide a fair or reasonable opportunity for the tenant to attend the move-out inspection as required by the *Act* as set out above.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
• having made an inspection does not complete the condition inspection report.

I must note, however, that the above does not exclude the landlords from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;
• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Accordingly, I will consider the landlords' monetary claims. The tenant disputes each of the claims above, stating that the landlords failed to support that the tenant had failed to return the home in reasonably clean and undamaged condition, and that much of the "damage" could be attributed to wear and tear. Furthermore, the tenant submits that the landlords failed to provide sufficient evidence to support the true state of the home as the tenant was not afforded the opportunity to attend the move-out inspection as summarized in the landlords' documents.

As noted above, the burden of proof is on the applicants to support their claims. I find that although it is undisputed that the tenant had removed the cover off the bathroom fan, I am not satisfied that the tenant had caused damage to the fan itself. I find that the landlords had decided to compensate the tenant on an earlier date the $100.00 as they had determined that this compensation was fair at the time. I do not find that the landlords have sufficiently supported that the tenant had failed to follow though with any mutual or conditional agreements that involved the refund of the $100.00. Accordingly, ,I dismiss this claim without leave to reapply.

The tenant disputed the landlords' claim for painting as they attribute the damage to wear and tear. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. According to the guideline, the useful life of interior paint is four years. In consideration of the evidence before me, I find that the tenant has resided in the home for almost a year. Although the landlords did testify to regular painting and touch ups prior to the beginning of this tenancy, I am not satisfied that the rental unit required painting due to the tenant's failure to leave the home in reasonably clean and undamaged condition, and therefore I dismiss the claim for paint and painting supplies without leave to reapply.

In consideration of the evidence before me, I am satisfied that the tenant failed to return the rental unit to the landlords in reasonably clean condition. I find that this is supported in evidence by the landlords, which included an invoice with detailed description of the cleaning required, and photos submitted in evidence. I find that the landlords did suffer a loss in the amount claimed due to the tenant's contravention of the Act, and accordingly, I allow the landlords' monetary claim for cleaning costs.

Lastly, the landlords are claiming the cost of gas paid in order to deal with the issues associated with this tenancy. I am not satisfied that this is an expense directly related to the tenant's contravention of the *Act.* Although the landlords may have incurred this expense in the process of dealing with this tenancy, I do not find that the tenant should be responsible for the landlords' decision to incur this expense. Accordingly, I dismiss the claims for gas without leave to reapply.

As the landlords were partially successful with their claim, I allow the landlords to recover half of the fling fee.

The tenant provided their forwarding address by way of email on March 6, 2021. In accordance with the service provisions under the Act, the email is deemed served 3 days later, on March 9, 2021. The landlords filed their application on March 24, 2021, within the required 15 days under section 38 of the Act. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of $1,546.40 in the landlords' favour under the following terms which allows a monetary award for damage and losses caused by the tenant.

Item	Amount
Unpaid rent for March 2021	$1,700.00

Cleaning Services	617.40
Replacement Mailbox keys	29.00
Filing Fee	50.00
Less Security Deposit Held	-850.00
Total Monetary Order	**$1,546.40**

The landlords are provided with this Order in the above terms and the tenant must be served with a copy of 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.

The remainder of the landlords' claims are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: September 24, 2021

Residential Tenancy Branch