Dispute Resolution Services

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 landlords applied for:

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

Both parties attended the hearing. Landlord IS (the landlord) represented landlord DS and tenant MD (the tenant) represented tenant CB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

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."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?

3. an authorization to retain the tenants' security deposit?
4. an authorization to recover the filing fee?

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 landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from September 15, 2020 to September 01, 2021. The tenant vacated the rental unit on March 15, 2021. Monthly rent of $1,950.00 was due on the fifteenth day of the month. At the outset of the tenancy a security deposit of $975.00 and a pet damage deposit of $487.50 were collected. The landlord returned the pet damage deposit on March 22, 2021 and holds in trust the security deposit (the deposit). The tenancy agreement was submitted into evidence. It states: "utilities to be in tenants name, responsible for ½ of all utilities. See addendum." The addendum states:

> 18. UTILITIES: Gas, Electric, Water, Cable are the responsibility of the tenants and are not included in the rent. The Landlord shall reimburse the Tenant ½ of all utilities within 5 business days of receiving an invoice. The invoke must be an actual copy or pdf attachment. Photo texts of invoices are not acceptable.

Both parties agreed the tenants provided the forwarding address in writing on March 15, 2021. This application was submitted on March 24, 2021.

The tenant affirmed he did not authorize the landlord to retain the deposit. The condition inspection report (the report), signed by both parties on September 25, 2020 (move in) and March 15, 2021 (move out) was submitted into evidence. It states:

> END OF TENANCY.
> Z. Damage to rental unit or residential property for which the tenant is responsible:
> [crossed line]
> [three lines of handwritten information crossed out]
> I N/A agree to the following deductions from my security deposit and or pet damage deposit: Security deposit: $975.00. Pet damage deposit: $487.00 Date: 25/09/20

The landlord stated the three lines of handwritten information were crossed out after the report was signed.

The tenant testified he served the tenants' notice to end tenancy (the tenants' notice) on January 31, 2021 indicating he will vacate the rental unit on March 15, 2021. The landlord emailed the tenant on February 04, 2021:

> As the Tenant in a Fixed Tenancy Agreement you are responsible for rent and 50% of utility expenses up and until the home upstairs is rented. We have advertised the property for rent and we'll be taking names and inquiries and setting up a mutually agreeable schedule with you to show the home in the near future.

The landlord is claiming for $975.00 for loss of rental income from March 15 to 31, 2021. The landlord started advertising the rental unit immediately after he received the tenants' notice, asking for $2,000.00. The rental unit was re-rented on April 01, 2021 and the landlord has been receiving since then monthly rent of $2,000.00.

Both parties agreed the rental building contains the tenants' upper suite and a lower suite. The tenants paid 50% of the electricity, water and gas bills and the lower tenants paid the remaining 50%. The electricity and water were billed to tenant MD and the landlord reimbursed him the amount of the bill for the lower suite.

The landlord is claiming for $389.06 for utilities:

- Gas from February 13 to March 31, 2021 in the amount of $157.22, including $15.75 for the changeover fee. The landlord said he paid $15.75 because the tenants changed the bill to the landlord's name when the tenancy ended. The landlord used a gas bill dated February 12, 2021, for consumption between January 15 and February 12, 2021, as an estimate.
- Electricity from March 01 to 31, 2021 in the amount of $60.76. The landlord used a previous electricity bill as an estimate.
- Water from October 01, 2021 to March 31, 2021, in the amount of $171.08.

The tenant agreed to pay the water bill in the amount of $171.08. The tenant testified he paid the electricity and gas bills for consumption until March 15, 2021 and the landlord owes him the amount of the bill for the lower suite.

The landlord emailed the tenant on March 03, 2021:

> As I had previously advised you - that you will be responsible for any vacancy shortfall of occupancy for both the rent and the utilities. Therefore you are responsible for the rent and utility expenses for 1/2 month period between when you move out (March 15, 2021) and when the new tenants move in (April 01, 2021). Please leave all the utilities in your name up until April 01, 2021 and I suggest that you contact the respective

> utility companies and have them read the meters on or around that date. With regards to rent for the 1/2 month period (March 15 - April 01, 2021) the amount of $975 is due March 15, 2021.

The landlord is claiming for $50.65 for a garage door remote control not returned by the tenants. The landlord stated the cost of a similar remote control is $50.65. The tenant agreed to pay $20.00 for the remote control.

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.

Move out inspection

Regulations 19 and 20 provide:

> Disclosure and form of the condition inspection report
> 19 A condition inspection report must be
> (a)in writing,
> (b)in type no smaller than 8 point, and
> **(c)written so as to be easily read and understood by a reasonable person.**
>
> Standard information that must be included in a condition inspection report
> (1) […]
> (2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [condition inspection: end of tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:
>
> (a)**a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;**
> (b)if agreed upon by the landlord and tenant,
>
> (i)the amount to be deducted from the tenant's security deposit or pet damage deposit,
> (ii)the tenant's signature indicating agreement with the deduction, and
> (iii)the date on which the tenant signed.
>
> (emphasis added)

I find the tenant signed the report authorizing the landlord to retain the deposit in error, as the authorization is dated September 25, 2020, ten days after the tenancy started. Furthermore, the report does not itemize the damages to the rental unit for which the tenant is responsible. I find the report is not easily read and understood because of the three lines crossed out.

As such, I find the report does not comply with regulations 19 and 20.

Section 35(3) requires the landlord to complete the report in accordance with the regulations.

Section 36(2) of the Act states:

> 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) [2 opportunities for inspection],
> (b)having complied with section 35 (2), does not participate on either occasion, or
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Policy Guideline 17 explains: "7. 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 having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it."

Thus, the landlords extinguished their right to claim against the deposit, per section 36(2)(c) of the Act.

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 September 15, 2020 to September 01, 2021, and the tenant ended the tenancy early on March 15, 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 tenants' failure to pay rent until the end of the fixed term tenancy agreement on September 01, 2021, the landlords incurred a loss of rental income from March 15 to 31, 2021 in the amount of $975.00.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

> Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Further to that, Policy Guideline 5 provides:

> 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.

I accept the landlord's testimony that he started advertising the rental unit immediately after he received the tenants' notice on January 31, 2021 asking for a higher amount of rent. Based on the email dated March 03, 2021, I find the landlord signed a new tenancy agreement on that date or earlier for a new tenancy starting on April 01, 2021.

I find the landlord did not take the mandatory steps to mitigate his damages, as the landlord could have asked for the same or a lower amount of rent and further advertised the rental unit for a tenancy starting on March 15, 2021.

Thus, I dismiss the landlords' claim for compensation for loss of rental income.

Utilities

Based on the testimony offered by both parties, I find the tenants paid the electricity and gas bills until March 15, 2021.

Based on the testimony offered by both parties, I find the landlords failed to prove, on a balance of probabilities, that they suffered a loss for the gas and electricity bills from March 16 to 31, 2021. The landlords did not submit the utilities bills for this period. Furthermore, as stated above, the landlord did not take the mandatory steps to mitigate his damages by re-renting the unit on March 15, 2021 for the same rent amount.

Residential Tenancy Branch Policy Guideline 1 states:

> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
> 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

The landlord cannot require the tenant to put the utilities bills in his name for premises that the tenant does not occupy. Thus, the landlord is not entitled to the fee to change the utility from the tenant's name to the landlord's name.

The tenant agreed to pay the water bill in the amount of $171.08. As such, I award the landlords $171.08.

Garage remote control

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".

Based on the testimony offered by both parties, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to replace the garage remote control and the landlords suffered a loss.

I find the landlords failed to prove, on a balance of probabilities, the amount of the loss suffered. The landlords did not submit an invoice. The landlords did not provide detailed information about the model of the garage remote control.

I award the landlords $30.00 for the garage remote control.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant's forwarding address in writing.

The landlords confirmed receipt of the tenants' forwarding address on March 15, 2021 and submitted this application for an authorization to retain the deposit.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the deposit and did not return the full amount of the deposit within the timeframe of section 38(1) of the Act, the landlords must pay the tenants double the amount of the 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:

> 3.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 tenants are entitled to a monetary award of $1,950.00 (double the security deposit of $975.00).

Filing fee and summary

As the landlords were partially successful in this application, I find the landlords are entitled to recover the $100.00 filing fee.

In summary:

Item	**$**
Utilities	171.08
Garage remote control	30.00
Filing fee	100.00
Total	**301.08**

Set-off

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 tenants	$1,950.00
Award for the landlords	$301.08
Final award for the tenants	$1,648.92

Conclusion

Pursuant to section 38 of the Act, I grant the tenants a monetary order in the amount of $1,648.92.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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: September 01, 2021

Residential Tenancy Branch