



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNDCT, DRI, OLC, FFT
For the landlords: MNRL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order to dispute a rental increase, pursuant to section 43;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee, under section 72.

The landlords' application pursuant to the Act is 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, under section 72.

Tenants JK (the tenant) and MS and landlord JT (the landlord) attended the hearing. The landlord was assisted by advocate AT. 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."

Service of the tenants' application

The tenant affirmed he served both landlords the notice of hearing in a single package by regular mail.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a)by leaving a copy with the person;

(b)if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

(a)by leaving a copy with the tenant;

(b)by sending a copy by registered mail to the address at which the tenant resides;

(c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application.

Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

(emphasis added)

Based on the tenant's testimony, I find the landlords were not served in accordance with the Act, as both of them were served together by regular mail. As noted above, each

respondent must receive the application and supporting evidence and regular mail is not a method of service.

As such, I dismiss the tenants' application with leave to reapply.

As the tenants were not successful, I find that the tenants are not entitled to recover the \$100.00 filing fee.

Service of the landlords' application

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail on August 26, 2021. The tracking numbers of both packages are on the cover page of this decision.

The tenant confirmed receipt of one package and stated he does not remember the content of the package. Later the tenant testified there were emails in the package.

The tenant's testimony was vague. Based on the landlord's convincing testimony and the tracking numbers, I find the landlords served the tenants the materials in accordance with section 89(1)(c) of the Act.

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 August 31, 2021, in accordance with section 90 (a) 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 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 the tenancy ended on July 31, 2021. Monthly rent at the end of the tenancy was \$2,650.00, due on the first day of the month. At the outset of the tenancy a deposit of \$1,325.00 was collected and the landlords hold it in trust.

Both parties agreed the tenants provided their forwarding address in writing on July 31, 2021. The landlord's application was submitted on August 08, 2021.

The landlord said the fixed-term tenancy started on August 01, 2020. The tenant affirmed the fixed-term tenancy started on August 01, 2019, ended on July 31, 2020, and a new fixed-term tenancy started on August 01, 2020. A copy of both tenancy agreements was submitted in evidence.

The tenancy agreement signed on July 26, 2019 indicates monthly rent of \$2,400.00 and that the tenant must vacate the unit when the tenancy ends because the landlord intends to "move into condo subject to market conditions".

The tenancy agreement signed on July 19, 2020 indicates monthly rent of \$2,650.00 and that the tenant must vacate the unit when the tenancy ends: "Landlord to move in". The July 19, 2020 addendum states:

15. The tenant acknowledges that the condition & cleanliness of the rental unit is to be comparable at the end of the tenancy with the condition & cleanliness at the time of move-in. Should cleaning and repair work be required at the end of tenancy to return the rental unit to the original "start of tenancy" condition the work will be undertaken by the Landlord and the applicable cost will be deducted from the security deposit held.

16. The Tenant will pay the Landlord for the professional cleaning of the carpets upon the termination of the Tenancy Agreement. The Tenant consents that the cost of professional carpet cleaning will be deducted from the Security Deposit without hindrance at the end of the tenancy.

The landlords are claiming for July 2021 rent in the amount of \$2,650.00, as the tenants did not pay July 2021 rent. The tenant stated he did not pay July 2021 rent.

The landlords are claiming compensation for carpet cleaning expenses in the amount of \$95.00. The landlord testified that professional cleaning was needed for better hygiene

and required by the tenancy agreement. The landlord submitted into evidence a carpet cleaning receipt in the amount of \$95.00. The tenant said the carpet was clean when the tenancy ended. The condition inspection report (the report) indicates: "End of Tenancy: Addendum 15/16 – carpets + cleaning. Everything good."

The landlords are claiming compensation for cleaning expenses in the amount of \$80.00. The landlord affirmed the 1,100 square feet, 2-bedroom rental unit was reasonably clean when the tenancy ended but the stove, the fridge and the kitchen drawers needed to be further cleaned. The report indicates the stove "needs some cleaning" at the end of the tenancy. The tenant stated the rental unit was perfectly clean when the tenancy ended. The landlord submitted into evidence a cleaning receipt in the amount of \$84.00 for two hours of cleaning.

The landlords are claiming compensation for their time in the amount of \$225.00. The landlord testified he served notices to enter the rental unit and the tenants did not allow him to access the rental unit to show it to prospective new tenants in June and July 2021. The tenant said he authorized the landlords to enter the rental unit at least once per week to show it to prospective tenants from June 19 to July 31, 2021. The landlord re-rented the rental unit on August 01, 2021.

The landlords submitted a monetary order worksheet indicating a total monetary claim in the amount of \$3,050.00.

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:

19 Disclosure and form of the condition inspection report

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.

20 Standard information that must be included in a condition inspection report

(1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

[...]

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

(i) entry; (ii) living rooms; (iii) kitchen; (iv) dining room or eating area;

(v) stairs; (vi) halls; (vii) bathrooms; (viii) bedrooms; (ix) storage; (x) basement or crawl space; (xi) other rooms; (xii) exterior, including balcony, patio and yard; (xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(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)

The report itemizes the condition of 16 items at the start of the tenancy and 3 different items at the end of the tenancy. I note the landlord did not complete the columns "CODE" and did not use the condition codes. I find the report does not comply with regulations 19 and 20, as it does not itemize the condition of each room in the rental unit, the windows coverings, appliances, fixtures and it is not easily understood.

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.

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 July 31, 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 \$2,650.00 (double the deposit of \$1,325.00).

Unpaid rent

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

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept both parties' uncontested testimony that the tenancy agreement required the tenants to pay monthly rent of \$2,650.00 on the first day of the month and that the tenants did not pay July 2021 rent.

Based on both parties' undisputed testimony and the tenancy agreement, I find the tenants are in arrears of \$2,650.00 for July 2021 rent.

As such, I award the landlords \$2,650.00.

Carpet cleaning

I accept both parties' undisputed testimony that the tenants did pay for the professional cleaning of the carpets. Based on the tenancy agreement, the carpet cleaning receipt and the undisputed testimony, I find the tenants failed to comply with the tenancy agreement and the landlords incurred a loss of \$95.00.

I award the landlords compensation in the amount of \$95.00.

Cleaning

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.

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 accept the landlord's testimony that the rental unit was reasonably clean when the tenancy ended. The report was not completed in accordance with the Regulations, as

referred in the topic “Move out inspection”. I find the landlord failed to prove, on a balance of probabilities, that the tenant did not leave the rental unit reasonably clean when the tenancy ended.

Thus, I dismiss the claim for compensation for cleaning expenses.

Time for visitation

The landlord’s time to show the rental unit to prospective new tenants is not a loss recoverable under the Act.

Based on the landlord’s testimony, I find the landlords failed to prove, on a balance of probabilities, that they suffered a loss because of the tenants’ non-compliance with the Act.

I dismiss the claim for time compensation.

Filing fee and summary

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

In summary:

Item	\$
Unpaid rent	2,650.00
Carpet cleaning	95.00
Filing fee	100.00
Total	2,845.00

Set-off

The tenants are awarded \$2,650.00. The landlords are awarded \$2,845.00.

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.

Thus, the landlords are awarded \$195.00.

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlords a monetary order in the amount of \$195.00.

The landlords are 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: October 13, 2021

Residential Tenancy Branch