



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy for this furnished unit began on July 1, 2020 but ended early on April 25, 2021. The tenants were obligated to pay \$1625.00 per month in rent in and at the outset of the tenancy the tenants paid a \$812.50 security deposit and an \$812.50 pet deposit which the landlord still holds. Written condition inspection reports were conducted at move in and move out with the landlord and tenant present. The landlord testified that the tenants left the unit extremely dirty at move out. The landlord testified that the tenants broke the agreement early by moving out with only four day's notice and not fulfilling the entirety of the contract.

The landlord testified that she had to have a professional cleaning company to clean the unit. The landlord testified that she provided an opportunity for the tenants to clean it themselves, but they declined. The landlord testified that the tenants left the BBQ very dirty and that a queen mattress pad and foam pad was stained which had to be replaced. The landlord testified that she was able to rent the unit for June 15, 2021 but seeks the rental loss from May 1- June 15, 2021 along with the filing fee for this application.

The landlord is applying for the following:

1.	Move Out Cleaning	\$703.50
2.	BBQ Cleaning	223.12
3.	Queen Mattress pad and foam topper	123.19
4.	Rental Loss May 1 to June 15, 2021	2437.50
5.	Filing fee	100.00
6.		
7.		

8.		
9.		
10.		
	Total	\$3587.31

CM spoke on behalf of the tenants and gave the following testimony. CM testified that at the move out inspection it became very clear that the level of cleanliness expected by the landlord was unreasonable and that he would never be able to achieve it. CM testified that he had the carpets shampooed and he had spent considerable time cleaning the unit. CM testified that he agrees that he “missed a few things” but doesn’t feel it the amount sought by the landlord for cleaning is realistic.

CM testified that the BBQ was overlooked at the move in inspection and that when he went to use it, it was filthy and found an animal living in it. CM testified that the mattress pad and foam topper were never used and already stained when they moved in. CM testified that it was a toxic living situation due to the landlord which forced them to move out earlier than expected. CM testified that the landlord always wanted his dog on a short leash, which was a change of the original agreement. CM testified that he agrees that short notice was given but was a result of being served a One Month Notice to End Tenancy for Cause on April 17, 2021. CM testified that on April 21, 2021 he gave the landlord notice that he would be vacating on April 25, 2021. CM testified that he felt the two deposits and a modest amount for cleaning would have been appropriate compensation for the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Move out cleaning – \$703.50

The tenant acknowledges that he overlooked a few items but felt the landlord set a standard that wasn't attainable. Residential Tenancy Policy Guideline 1 addresses the issue as follows:

*This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities¹. The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. 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)², or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).***

Although there were some deficiencies in the tenants attempts to clean the unit, I do not agree with the standard put forth by the landlord. The landlord sent the tenant a cleaning list the repeatedly stated "thorough" over and over for each individual item in the unit that needed to be cleaned. I agree with the tenant that the standard put forth by the landlord is unreasonably high. Based on the documentation and photos submitted by each party, I find that the reasonable and appropriate amount that the landlord is entitled to for cleaning is \$300.00.

BBQ – \$223.12 & Mattress pad and foam topper \$123.19

The landlord rents this unit as furnished. I asked the landlord if there was an inventory sheet that incoming tenants can review in terms of what items are included and in what condition each item is in. The landlord testified that she does not have one but only makes note of any issues or damage on the standard Condition Inspection Report at the end of the tenancy. Without any notations made on the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the

start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

Loss of Rent - \$2437.50

I find that the landlord and tenants entered into a fixed term tenancy for the period from July 1, 2020 to June 30, 2021. Both parties signed the written tenancy agreement, and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on April 25, 2021, prior to the end of the fixed term on June 30, 2021. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I find that the landlord is entitled to the rental loss for May 2021 in the amount of \$1625.00; the tenant acknowledges the very short notice. I address the landlords request for the June 1-15, 2021 rental loss of \$812.50 as follows. I find that the landlord failed to provide sufficient

documentary evidence how many inquiries were made for re-rental, how many showings were done, and when they were done. In addition, when asked if she renewed the advertisements on a regular basis, the landlord stated she did not and that the advertisements hadn't expired yet. Furthermore, the landlord asked for more rent than the current amount. The landlord did not offer a similar rent or flexible terms in a reasonable effort to mitigate, for those reasons, that portion of the application is dismissed without leave to reapply.

The landlord is entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$2025.00. I order that the landlord retain the \$812.50 security deposit and \$812.50 pet deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$400.00. This order may be filed in the Small Claims 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: November 04, 2021

Residential Tenancy Branch