



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, 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 section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 2:09 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands 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."

On May 05, 2021 the landlord was granted an order for substituted service:

For this reason, I allow the landlord substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

[...]

I order that documents served in this manner have been sufficiently served to the tenant for the purposes of the Act, three days after the date that the e-mail is sent by the landlord to the tenant.

I accept the landlord's testimony that the tenant was served with the application, the evidence and the May 05, 2021 interim decision (the materials) by email sent on May 12, 2021. The email print-out was submitted into evidence.

The tenant is deemed to have received the materials on May 15, 2021.

Based on the landlord's convincing testimony and the May 12, 2021 email, I find the tenant was served the materials in accordance with the interim decision dated May 05, 2021 and section 71(1) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

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?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the fixed-term tenancy started on May 01, 2020 and ended on April 01, 2021. Monthly rent was \$1,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 and a pet damage deposit of \$500.00 were collected. The landlord holds the security and pet damage deposits (the

deposits) in trust. The tenancy agreement was submitted into evidence. It indicates the fixed-term tenancy was from May 01, 2020 to April 30, 2021, the tenant agreed to pay \$50.00 monthly for internet and cable tv and \$50.00 monthly for utilities (heat and electricity).

The landlord stated the tenant did not provide notice to end tenancy. The tenant abandoned the rental unit and placed the key in the landlord's mailbox on April 01, 2021. The tenant did not provide her forwarding address.

The landlord is claiming for unpaid rent for December 2020, January, February, March and April 2021 in the total amount of \$6,500.00 (\$1,300.00 per month x 5 months), internet in the total amount of \$250.00 (\$50.00 per month x 5 months) and utilities in the total amount of \$250.00 (\$50.00 per month x 5 months) as the tenant did not pay rent, internet and utilities since December 2020. The landlord paid for the internet and utilities cost.

The landlord is claiming \$245.28 for storage expenses. The landlord testified she lived next door to the tenant. The landlord did not see the tenant in the rental unit and was not able to contact the tenant from December 17, 2020 to February 17, 2021. The landlord concluded the tenant had abandoned the rental unit and rented a container to store her belongings on February 17, 2021. A receipt for the storage container in the amount of \$245.28 was submitted into evidence. The receipt indicates the amount paid was for the minimum period of one month. The tenant returned to the rental unit on February 18, 2021.

The landlord is claiming \$200.00 for cleaning expenses. The landlord said the tenant did not clean the one-bedroom, 500 square feet rental unit. The landlord submitted into evidence 8 photographs dated April 02, 2021 showing leftover food, personal belongings abandoned and a dirty toilet. The landlord paid \$200.00 for 15 hours of cleaning. The landlord was able to advertise the rental unit on April 15, 2021 and re-rented it on June 15, 2021 for \$1,420.00, including utilities and internet.

The landlord is claiming for litigation expenses in the total amount of \$505.00. The landlord affirmed she paid a membership fee of \$205.00 to obtain legal advice about tenancy matters regarding this dispute, \$100.00 to print the materials for this application and \$200.00 for guidance to submit this application online.

The landlord is claiming for a total amount of \$8,050.28.

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.

Unpaid rent

I accept the landlord's convincing uncontested testimony and the tenancy agreement that the tenant agreed to pay monthly rent of \$1,300.00 on the first day of the month.

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

Based on the landlord's convincing and undisputed testimony, I find the tenant is in rental arrears in the amount of \$5,200.00 for December 2020, January, February and March 2020 (\$1,300.00 per month).

I award the landlord \$5,200.00 for unpaid rent.

Loss of rental income

Based on the landlord's uncontested testimony and the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term from May 01, 2020 to April 30, 2021, and the tenant ended the tenancy early on April 01, 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 April 30, 2021, the landlord incurred a loss of rental income from April 01 to 30, 2021 in the amount of \$1,300.00.

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 she cleaned the rental unit from April 02 to 15, 2021. Based on the rental unit's size, the photographs and the landlord's testimony, I am not satisfied that the landlord needed to clean the unit for 15 days before she advertised the rental unit to re-rent it. I find the landlord did not take the mandatory steps to mitigate her damages, as the landlord could have advertised the rental unit for a tenancy starting on April 02, 2021.

As such, I award the landlord loss of rental income from April 15 to 30, 2021 in the amount of \$650.00 (\$1,300.00 per month / 30 x 15 days).

Utilities and internet

I accept the uncontested testimony and the tenancy agreement that the tenant must pay \$50.00 per month for utilities and \$50.00 for internet.

Based on the landlord's uncontested testimony, I find the tenant breached the tenancy agreement by not paying \$50.00 per month for utilities and \$50.00 for internet from December 2020 to April 01, 2021 and the landlord incurred a loss of \$400.00 (\$100.00 per month from December 01, 2020 to April 01, 2021).

Based on the landlord's testimony, I find the landlord did not prove, on a balance of probabilities, that she had to pay for utilities and internet in April 2021 when the tenant was not occupying the rental unit.

As such, I award the landlord \$400.00 in compensation for this loss.

Storage

Regulation 24 states:

- (1)A landlord may consider that a tenant has abandoned personal property if**
(a)the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
(b)subject to subsection (2), the tenant leaves the personal property on residential property

- (i)that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or**
- (ii)from which the tenant has removed substantially all of his or her personal property.**
- (2)The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if**
 - (a)the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or**
 - (b)the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.**
- (3)If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.**

(emphasis added)

Based on the landlord's convincing testimony, I find the tenant did not ordinarily occupy the rental unit from December 17, 2020 to February 17, 2021 and did not pay rent. I find it was reasonable for the landlord to conclude that the tenant abandoned the rental unit, per Regulation 24(2).

Based on the landlord's convincing testimony and the storage receipt, I find the landlord suffered a loss of \$245.28 for storage expenses due to the tenant's non-compliance with section 26 of the Act.

Thus, I award the landlord \$245.28 in compensation for this loss.

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.

Based on the landlord's undisputed convincing testimony and the photographs, 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 \$200.00.

I award the landlord compensation in the amount of \$200.00 for cleaning expenses.

Litigation expenses

Section 72(1) of the Act provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the Act does not provide for recovery of other costs associated with making an application for dispute resolution, gathering evidence, copying evidence, serving hearing documents or membership fees.

Thus, I dismiss the landlord's claim without leave to reapply.

Filing fee and the deposits

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

Residential Tenancy Branch Policy Guideline 17 states:

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.

The landlord is authorized to retain the \$1,150.00 deposits in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent	5,200.00
Loss of rental income	650.00
Utilities and internet	400.00
Storage	245.28
Cleaning	200.00
Filing fee	100.00
Subtotal	6,795.28
Minus deposits	1,150.00 (subtract)
Total:	5,645.28

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,150.00 deposits and grant the landlord a monetary order in the amount of \$5,645.28.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: November 03, 2021

Residential Tenancy Branch