



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, 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 for this application, under section 72.

I left the teleconference connection open until 2:27 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, represented by property manager HY (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 he 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."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on July 19, 2021, in accordance with section 89(1)(d) of the Act (the tracking number is recorded on the cover of this decision).

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 tenant is deemed to have received the materials on July 24, 2021, in accordance with section 90 (a) of the Act.

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

Preliminary Issue – amount of the monetary claim under section 67

The notice of hearing states the landlord is seeking a monetary order in the total amount of \$1,082.20 for several damages caused by the tenant:

The tenant failed to return the keys, had trashed the place, and smoked heavily in the unit, had broken the dishwasher panel, had stuck stickers all over the place, had damaged the walls, broken the bathroom thermostat, and had broken a panel of the Dishwasher.

The landlord submitted a monetary order worksheet (RTB form 37) listing six claims in the total amount of \$1,904.70 and that “Note: we applied the damage deposit (\$822.50) towards the total and the balance left is \$1,082.20.”

I find the landlord clearly stated in the monetary order worksheet that the claim is for a total amount of \$1,904.70. Thus, I accept the landlord’s claim for compensation under section 67 of the Act in the total amount of \$1,904.70.

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 for this application?

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 tenancy started on September 17, 2020 and ended on April 19, 2021. Monthly rent was \$1,645.00, due on the first day of the month. At the outset of

the tenancy a security deposit (the deposit) of \$822.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

Monthly rent: \$1,645.00, due on the first day of the month.

[...]

4) There will be no smoking allowed on the premises. If the Tenant(s) their Agent(s), associates, representatives, guests, visitors, invitee s, or family members are found smoking on the premises of the Rental Unit, the Tenant(s) will be subject to a \$ 100.00 fine on their first offence and will be subject to eviction and the termination of the tenancy on their second offence; furthermore, if the tenancy is terminated due to non-compliance of this addendum (i.e. Addendum "4"), the Tenant(s) will be subject to addendum "9" regardless (i.e. Tenant(s) will lose their damage deposit and will be liable for any clean up, damage costs, and all operational costs associated with re-renting the unit including management services costs, and advertising. [THIS IS A MAJOR TERM IN THIS CONTRACT)

The landlord submitted into evidence a text message received from the tenant on June 28, 2021 containing the forwarding address. The landlord stated the tenant asked the landlord to forward mail packages received at the rental unit's address to the forwarding address.

The landlord submitted into evidence a copy of the move in condition inspection report (the report). The landlord contacted the tenant via email, text message and phone to schedule a move out inspection, but the tenant did not reply. The tenant did not give notice to end tenancy and texted the landlord on April 19, 2021 indicating that she moved out and that she lost the keys. The landlord did not complete the move out inspection report, as the tenant was not present.

The landlord is claiming unpaid rent in the total amount of \$3,290.00 for March and April 2021 rent. The landlord testified the tenant paid rent on March 01, 2021, but the cheque did not have sufficient funds and the landlord did not receive payment for March rent. The landlord submitted a bank statement indicating: "returned cheque \$1,645.00". The landlord submitted a direct request worksheet (RTB form 46) indicating the tenant did not pay rent in March and April 2021 in the total amount of \$3,290.00.

The landlord is claiming \$400.00 for cleaning expenses. The landlord said the one bedroom, 421 square feet rental unit was in excellent condition and painted when the tenancy started. The landlord affirmed the tenant did not clean the rental unit and left garbage in the unit. The landlord submitted photographs taken on April 19, 2021, a

cheque in the amount of \$400.00 to pay the cleaners and an invoice for 8 hours of cleaning in the total amount of \$400.00. The invoice states:

2 Cleaners- Professionally cleaned 1 junior 1 bedroom unit: removed all stickers, bagged up all the garbage, cleaned and emptied all the cupboards, wiped down all the walls, cleaned windows, oven, fridge, bathroom, floors, vents, balcony.

The landlord is claiming \$109.20 for key replacement expenses, as the tenant did not return the keys and the landlord had to change the lock of the rental unit's door. The landlord submitted into evidence a receipt for key replacement and a cheque in the amount of \$109.20.

The landlord is claiming \$821.24 for painting, thermostat replacement and disposal of garbage. The landlord stated the tenant smoked excessively in the rental unit and the walls needed to be painted because of the smoke, the tenant damaged the thermostat and it needed to be replaced. The landlord submitted an invoice for painting, change of the thermostat and disposal of garbage and a cheque in the amount of \$821.24.

The landlord is claiming \$420.00 for dishwasher repair expenses, as the tenant damaged the dishwasher front panel. The landlord submitted into evidence photographs showing a damaged dishwasher, an invoice for the dishwasher repair and a cheque.

The landlord is claiming \$140.00 for the fob (electronic key) replacement. The landlord testified the tenant received one fob when the tenancy started, the landlord may have provided a second fob to the tenant during the tenancy and that the cost to replace two fobs is \$140.00. The landlord submitted an email dated March 23, 2021:

Landlord agent: Our tenant [redacted], has lost her only FOB. Please disable the lost FOB. She is authorized to purchase a new FOB.

Strata manager: A new FOB is \$75.00. We accept payment by etransfer, cheque, or bank draft.

The landlord is claiming \$14.26 for the mailbox key, as the tenant lost the mailbox key, and the landlord paid the claimed amount for a replacement.

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.

Report

Section 35 of the Act requires the landlord to offer the tenant at least 2 opportunities for the move out inspection and to complete the report in accordance with the regulations.

Regulation 17 states:

- (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.

I find the landlord was aware the tenant was moving out, as the landlord contacted the tenant several times to offer a date for the move out inspection. The landlord did not serve the notice of final opportunity to schedule a condition inspection (RTB 22).

I find the landlord did not comply with regulation 17 and section 35 of the Act.

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 landlord extinguished his right to claim against the deposit, per section 36(2)(a) of the Act.

Deposit

Section 38(1) of the Act requires the landlord to either return the 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 landlord confirmed receipt of the tenant's forwarding address in writing on June 28, 2021 and did not return the deposit.

I note the landlord can only retain the deposit if the Residential Tenancy Branch or the tenant authorizes the landlord to do so.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his 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 landlord must pay the tenant double the amount of the deposit.

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 tenant is entitled to a monetary award of \$1,645.00 (double the deposit of \$822.50).

Unpaid rent

Based on the convincing testimony offered by the landlord, the tenancy agreement, the bank statement and the direct request worksheet, I find the tenant must pay monthly rent of \$1,645.00 on the first day of the month and did not pay March and April 2021 rent.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

Per section 26(1) of the Act, I award the landlord \$3,290.00 for March and April 2021 rent.

Cleaning expenses

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.

I find the photographs show the rental unit was not clean when the tenancy ended.

Based on the landlord's convincing testimony, the photographs and the invoice, I find, on a balance of probabilities, 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.

I find the amount of \$400.00 to clean a 421 square feet unit is not reasonable. Considering the rental unit size and the photographs submitted into evidence, I find it reasonable to award compensation in the amount of \$250.00 for cleaning expenses.

Key replacement

Section 37 (2)(b) of the Act states: "When a tenant vacates a rental unit, the tenant must give the landlord all the keys..."

Based on the landlord's convincing testimony and the key replacement receipt, I find the tenant breached section 37(2)(b) of the Act by not returning the keys for the rental unit door and the mailbox and the landlord incurred a loss of \$109.20 for the door keys and \$14.26 for the mailbox key.

I find the landlord's testimony about the second fob was vague. Based on the email dated March 23, 2021, I find the tenant lost and did not replace the only fob that he had, breaching section 37(2)(b) of the Act. I find the landlord incurred a loss of \$75.00 for the replacement of one fob.

As such, I award the landlord \$198.46 in compensation for key replacement (\$109.20+\$14.26+\$75.00).

Painting, thermostat, and garbage removal expenses

Residential Tenancy Branch Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

Based on the landlord's convincing testimony and the tenancy agreement, I find the tenant was not authorized to smoke in the rental unit and that the tenant damaged the thermostat. I find that the tenant was negligent when he smoked in the rental unit and the smoke damaged the paint.

I find the tenant breached section 37(2)(a) of the Act by failing to paint the damaged walls and failing to repair the damaged thermostat. Based on the invoice and the cheque submitted into evidence, I find the landlord suffered a loss of \$821.24 because of the tenant's failure to comply with section 37(2)(a) of the Act.

I award the landlord compensation in the amount of \$821.24

Dishwasher repair

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 landlord's convincing testimony, the photographs and the invoice, I find, on a balance of probabilities, the tenant breached section 32(3) of the Act by failing to repair the damaged dishwasher and the landlord incurred a loss of \$420.00.

I award the landlord \$420.00 for dishwasher repair expenses.

Filing fee and summary

As the landlord was successful in his application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is awarded:

Item	Amount \$
Unpaid rent (March and April 2021)	3,290.00
Cleaning expenses	250.00
Key replacement	198.46
Painting, thermostat and garbage removal	821.24
Dishwasher repair	420.00
Filing fee	100.00
Total	5,079.70

Set-off

The tenant is awarded \$1,645.00. The landlord is awarded \$5,079.70.

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 landlord is awarded \$3,434.70.

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$3,434.70.

The landlord is provided with this order in the above terms and the tenant must be served with 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.

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: December 09, 2021

Residential Tenancy Branch