Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

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

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $10,735.22 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:00 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. The landlord's agent ("**AC**") and property manager ("**AS**") 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that AC, AS, and I were the only ones who had called into the hearing.

The AC testified she served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail on July 29, 2021. She testified that she sent further documentary evidence to the tenants via registered mail on January 14, 2022. She provided Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenants are deemed served with these documents on August 3, 2021 and January 19, 2022 respectively, five days after AC mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $10,735.22;

2) recover the filing fee;
3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of AC and AS, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting November 18, 2020 and ending November 30, 2021. Monthly rent was $1,550 plus $50 for parking and was payable on the first of each month. The tenants paid the landlord a security deposit of $775 and a pet damage deposit of $775 (collectively, the "**deposits**"), which the landlord continues to hold in trust for the tenants.

The tenancy agreement contained a liquidated damages clause, which stated:

> LIQUIDATED DAMAGES: If the tenant ends this tenancy in less than 12 months from the start of this tenancy agreement, the tenant agrees to pay $500 to the landlord as a genuine pre estimate of the landlords costs for re renting the rental unit, which include costs for advertising and administration. The tenant(s) agree that the liquidated damages fee is due and payable at the time they give notice of their intention to end this agreement prior to the date originally agreed to.

The parties conducted a move-in condition inspection on November 18, 2020. A copy of this inspection report was submitted into evidence.

On June 26, 2021, the tenants gave notice of their intention to vacate the rental unit at the end of July 2021. The tenants vacated the rental unit on July 2, 2021. They did not pay any rent for the month of July 2021.

The tenants provided their forwarding address to AS via email on June 29, 2021.

The landlord made this application on July 16, 2021, 14 days after the tenants vacated the rental unit.

AS testified that she arranged with the tenants to attend the rental unit on July 2, 2021 at 1:00 pm to conduct a move-out condition inspection. She sent the tenants a text message at 11:53 am reminding them of the inspection, and tenant JP responded to confirm the time and advise her that he was still cleaning out the rental unit. AS testified that she arrived at the rental unit at 1:00 pm, and that the tenants were still in the process of moving out and loading their vehicle. JP told AS that he had to drop off one last load of belongings at the tenants' new residence, and that he would be back shortly to conduct the move-out inspection.

AS testified that he never returned. AS waited for some time, then called JP. She testified that he told her that the tenants would not be returning. AS then entered the rental unit and conducted a move out condition inspection without the tenants. A copy of the move out inspection report was entered into evidence. It listed significant damage to the rental unit including:

- broken stove vent, refrigerator, countertops and cabinets, living room light fixtures, dining room blinds, dining room windows, bedroom blinds, bedroom windows, bedroom closet door, bedroom light fixtures, master bedroom blinds, master bedroom light fixtures, bathtub, ensuite bathroom countertops, ensuite bathroom light fixtures;
- burn marks on the patio; and
- dirty dishwasher, washer & dryer, and cabinets & countertops, doors, walls, light fixtures throughout the rental unit.

The landlord submitted photographs into evidence showing holes in the walls throughout the rental unit, garbage and other belongings left on the floor of the rental unit, and a broken, boarded up window. AC testified that the tenants had improperly patched some holes in the wall and that these needed to be re-patched. The rental unit had been repainted just prior to the start of the tenancy. The tenant did not return the keys to the rental unit after vacating, so the landlord replaced the lock on the front door.

The landlord submitted several invoices into evidence for costs it incurred cleaning and repairing the damage caused by the tenants, as follows:

Description	Amount
Cleaning (pre repairs and painting)	$315.00
Cleaning (post repairs and painting)	$300.00
Painting and wall repairs	$4,767.00
Blind replacement	$262.50
Lock replacement	$234.55
Total	**$5,879.05**

AC testified that other expenses were incurred by the landlord in repairing the damage caused by the tenants, but that the landlord had neglected to include copies of those receipts in their evidence package. AC stated that the landlord waived entitlement to recover these expenses.

AC testified that the rental unit needed to be cleaned before any of the repairs could be undertaken (for example, the garbage and abandoned belongings had to be removed). After the repairs were made, the rental unit required additional cleaning in order to make it rentable (for example, the bathrooms and kitchen had to be cleaned).'

The painting invoice describes the work done as follow:

EXTENSIVE DAMAGE TO DRYWALL, DOORS, & DOORFRAMES -patch ceilings -patch & sand walls & door frames -prime ceilings & walls as needed -paint ceilings -paint all walls -order & install new doors -paint doors, door frames, baseboards, window sills -order & installed new window coverings

The landlord seeks a monetary order to recover the cost of these repairs, the liquidated damages fee, and July 2021 rent.

Analysis

1. July 2021 Rent

I accept AC's testimony that the tenants failed to pay rent for July 2021. Per the tenancy agreement, rent is due on the first of the month. As such, the tenants were required to pay $1,550 in rent on July 1, 2021, regardless of the fact they vacated the rental unit the following day.

As such, I order that the tenant pay the landlord $1,550 representing the payment of July 2021 rent.

2. Liquidated Damages

RTB Policy Guideline 4 addresses liquidated damages. It states:

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.
>
> There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:
> - A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
> - If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
> - If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.
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> If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when

> they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

The liquidated damages specified in the tenancy agreement are $500. This is not an extravagant amount. The amount is not a penalty for the failure of the tenants paying some other amount. It only becomes payable if the tenants vacate the rental unit prior to the end of the fixed term of the tenancy agreement.

As such, I find that the liquidated damages clause is not a penalty clause and represents a genuine pre-estimate of the landlord's costs associated with re-renting the rental unit. I order the tenants to pay the landlord $500 as liquidated damages.

3. Cleaning and Repairs

Residential Tenancy 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:
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> - 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.

Sections 32(2) and (3) of the Act states:

> **Landlord and tenant obligations to repair and maintain**
> 32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
> (3) 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.

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, and
(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenants breached the above-noted sections of the Act, that the landlord suffered a calculable loss because of the breaches, that the landlord acted reasonably to minimize the loss it suffered.

Based on the undisputed testimony of AC and AS, the condition inspection reports, and the photographs, I find that the tenants caused a significant amount of damage to rental unit which they did not repair or, in the case of the poorly patched holes in the walls, adequately repair. They did not clean the rental unit prior to leaving. This amounts to breaches of sections 32(2) & (3) and 37(2)(a).

I accept that all aspects of the work described in the painting invoice were necessary to remediate the damage caused by the tenants to the walls, ceiling, window frames, and doors. I find the amount to be reasonable. As the rental unit was painted just prior to the tenancy starting, I do not find it appropriate to reduce the amount the landlord may recover to account for a reduction in the useful life of the interior paint.

I find that the tenants damaged the blinds, and this required them to be replaced. I find the amount the landlord paid for their replacement to be reasonable. They are entitled to recover the replacement cost.

The rental unit required significant cleaning after the tenants vacated. The approach the landlord to cleaning seems a reasonable one. The belongings left in the rental unit needed to be moved before the repair work had to be done, but it would not make much sense to do a thorough cleaning of the unit at this point, as the unit would have to be cleaned after the painting and repairs were done in any event. I find that the amounts

for both cleaning receipts are reasonably incurred. The landlord is entitled to recover the full amount of each.

Finally, the tenants breached the Act by failing to return the keys to the rental unit. As a result of this breach, I find the landlord acted reasonably to re-key the front door. I find the amount for this work to be reasonable. The landlord is entitled to recover this amount.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the deposits in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenants pay the landlord $6,479.05, representing the following:

Description	Amount
Cleaning (pre repairs and painting)	$315.00
Cleaning (post repairs and painting)	$300.00
Painting and wall repair	$4,767.00
Blind replacement	$262.50
Lock replacement	$234.55
July 2021 Rent	$1,550.00
Liquidated damages	$500.00
Filing fee	$100.00
Credit for deposits	-$1,550.00
Total	**$6,479.05**

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: February 9, 2022

Residential Tenancy Branch