



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, 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 landlords applied 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 tenant's security deposit (the deposit), under section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:16 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 landlords, represented by agents KC (the landlord) and KR, attended the hearing and were 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 landlords' agents and I were the only ones who had called into this teleconference.

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."

Preliminary Issue - Service of the application

The landlords were granted a substitute service order on August 13, 2021. I accept the landlord's testimony that the tenant was served with the application and the substitute service order (the materials) by email on August 18, 2021, in accordance with section

71(2) of the Act and the substitute service decision and the evidence and the amendment on January 11, 2021. The landlords submitted copies of the emails into evidence.

The substitute service order provides that the materials served by email are deemed to be received on the 3rd days after the email was sent. Given the evidence the emails were sent on August 18, 2021 and January 11, 2022, the tenant is deemed to have received the materials on August 21, 2021 and the evidence and the amendment on January 14, 2022.

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

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 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 landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the parties entered into a fixed term tenancy from September 15, 2020 to September 30, 2021. The landlords learned the tenant abandoned the rental unit on July 15, 2021. Monthly rent was \$1,500.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$750.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence. It states the tenant must pay 25% of utilities (electricity and gas) and that the parties agreed to liquidated damages of \$750.00:

39. If the tenant breaches a material term of this agreement that causes the landlord to end the tenancy of any fixed term, or if the tenant provides the landlord notice, whether written, oral, or by conduct, of an intention to breach this agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will

pay to the landlord the sum of \$750.00 as liquidated damages and not as a penalty or all costs associated with re-renting the rental unit.

The landlords are claiming for July 2021 rent in the amount of \$1,500.00. The landlord attached a ten day notice for unpaid rent (the Notice) on the rental unit's door on July 08, 2021. The landlord inspected the rental unit on July 15, 2021 and learned that the tenant abandoned the suite. A copy of the Notice was submitted into evidence. It indicates the tenant failed to pay rent in the amount of \$1,500.00 due on July 01, 2021 and utilities in the amount of \$72.22 due on May 31, 2021. The effective date was July 18, 2021. The landlord submitted a ledger indicating the tenant did not pay July 2021 rent in the amount of \$1,500.00. The tenant did not serve the forwarding address.

The landlords are claiming utilities in the amount of \$114.95. The landlord submitted a ledger indicating the tenant did not pay the gas bills for June 2021 (\$24.42) and July 2021 (\$32.64) and electricity bills for June 2021 (50.96) and July 2021 (\$6.93). The landlord affirmed the amounts claimed are the tenant's share of 25% of the total utilities bills and that the monetary order worksheet indicates a bigger amount by mistake.

The landlords are claiming liquidated damages in the amount of \$750.00, as the tenant abandoned the rental unit before the end of the fixed term tenancy. The landlord affirmed the cost to replace the tenant was higher than the liquidated damages.

The landlords are claiming cleaning expenses in the amount of \$220.00, as the tenant did not clean the rental unit. The landlord submitted a receipt for 5.5 hours of cleaning at \$40.00 per hour. The landlord affirmed the one-bedroom rental unit was not clean when the tenancy ended and submitted 47 photographs dated July 15, 2021. The tenant left food in the fridge and cupboard.

The landlords are claiming garbage removal expenses in the amount of \$750.00, as the tenant did not remove a couch, a television, several bags of garbage, a fireplace, dishes and a bed frame. The landlord submitted an invoice indicating: "removal of all garbage, furniture and items left behind \$750.00".

The landlords are claiming \$210.00 for the replacement of a light and the smoke alarm, as the tenant removed these items. The landlord submitted an invoice indicating: "replace light outside door \$150.00 and replace smoke detector \$50.00. GST 5%. Total: 210.00". The landlord affirmed these amounts are for the labour, the light and the smoke detector. The landlord submitted two photographs showing a missing external light and the damaged smoke detector.

The landlords are claiming locksmith expenses in the amount of \$153.56, as the landlord hired a locksmith to change the lock and provide 3 new keys. A receipt in the amount claimed was submitted into evidence.

The landlords submitted a monetary order worksheet dated January 10, 2022 indicating the total amount of \$3,806.16.

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.

Rent

Based on the convincing testimony offered by the landlord, the Notice, the tenancy agreement, the ledger and the monetary order worksheet, I find the tenant must pay monthly rent of \$1,500.00 on the first day of the month and did not pay July 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 \$1,500.00 for July 2021 rent.

Utilities

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenants must pay 25% of the utilities bills for electricity and gas.

Based on the landlord's undisputed testimony and the ledger, I find the tenants breached the tenancy agreement by not paying the gas and electricity bills for June and July 2021 and the landlords suffered a loss of \$114.95.

As such, I award the landlords \$114.95 in compensation for this loss.

Liquidated damages

I accept the landlord's convincing uncontested testimony that the landlords learned the tenant abandoned the rental unit on July 15, 2021. I find the tenancy ended on July 15, 2021, per section 44(1)(v) of the Act.

The tenancy agreement provides for liquidated damages of \$750.00

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

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.

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.

(emphasis added)

In this matter, I find that \$750.00 is a reasonable pre-estimate of the cost of re-renting the property and I do not find that this provision is a penalty. Accordingly, I find that the liquidated damages clause is valid.

The tenant ended the tenancy early. Accordingly, I award the landlords \$750.00 in liquidated damages.

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.

Based on the landlord's convincing undisputed testimony, the photographs and the receipt, I find the tenant failed to comply with section 37(2) of the Act by not reasonably cleaning the rental unit and the landlords incurred a loss of \$220.00 for 5.5 hours of cleaning at the hourly rate of \$40.00.

As such, I award the landlords \$220.00.

Garbage removal

Based on the landlord's convincing undisputed testimony, the photographs and the receipt, I find the tenant failed to comply with section 37(2) of the Act by not removing his belongings when the tenancy ended and the landlords incurred a loss of \$750.00 to remove a couch, a television, several bags of garbage, a fireplace, dishes and a bed frame.

As such, I award the landlords \$750.00.

Light and smoke alarm

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 undisputed testimony, the photographs and the receipt, I find the tenant failed to comply with section 32(3) of the Act by not repairing the damaged light and smoke alarm and the landlords suffered a loss of \$210.00.

Locksmith

Section 37(2)(b) of the Act states:

When a tenant vacates a rental unit, the tenant must: 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.

Based on the landlord's convincing undisputed testimony and the receipt, I find the tenant breached section 37(2)(b) of the Act by failing to return the keys to the landlords when the tenancy ended, and the landlords incurred a loss of \$153.56.

As such, I award the landlords \$153.56.

Filing fee and deposit

As the landlords were successful, I award the recovery of the filing fee paid for this application in the amount of \$100.00.

As explained in section D.2 of Policy Guideline #17, 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.

I order the landlords to retain the deposit of \$750.00 in partial satisfaction of the monetary award.

In summary, the landlords are entitled to:

Expenses	\$
Rent July 2021	1,500.00
Utilities	114.95
Liquidated damages	750.00
Cleaning expenses	220.00
Garbage removal	750.00
Light and smoke alarm	210.00
Locksmith	153.56
Filing fee	100.00
Subtotal	3,798.51
Minus deposit	750.00
Total	3,048.51

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlords to retain the \$750.00 deposit and grant the landlords a monetary order in the amount of \$3,048.51.

The landlords are 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: February 03, 2022