



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

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord provided documentary evidence that tenant NG was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by e-mail on September 15, 2021, in accordance with the September 23, 2021 Decision grant the landlord authority to serve these documents by email to tenant NG. Section 44 of the *regulation* deems documents served in such a manner to be received on the 3rd day after they have been emailed.

Based on the undisputed testimony and evidence of the landlord, I find that tenant NG has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing, I confirmed with the agent that the tenancy agreement lists a corporate landlord name and that the Application for Dispute Resolution identified a person was the landlord. The agent clarified that the corporate name on the tenancy agreement is the property manager who managed the tenancy and the person named on the Application is the owner of the property.

As the parties named in the tenancy agreement are the tenants and the property management company, I find that the named owner of the property was not a party to the tenancy, and I amend the landlord's Application to name the property management company name.

In addition, as the landlord was only allowed to serve the tenant NG by email and did not serve the tenant NS, as the request to serve tenant NS by email was dismissed in the September 21, 2021 substituted service decision, I amend the landlord's application to exclude the tenant NS.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to and/or cleaning of the rental unit; for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 37, 38, 67, and 72 of the *Act*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 22, 2021 for a one year fixed term tenancy beginning on June 1, 2021 for a monthly rent of \$3,200.00 due on the 1st of each month with a security deposit of \$1,600.00 paid.

The tenancy agreement contains a clause that stipulates:

“If the tenant ends the fixed term before the end of the original term as set out in (B) above, the landlord may, at the landlord’s option, treat this Tenancy Agreement as being at an end. In such event, the sum of 6400 shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said promises.

The landlord submitted that the tenant’s rent cheque for the month of August 2021 was returned as insufficient funds in early August. The landlord seeks compensation for the tenants’ failure to pay rent for the month of August, in the amount of \$3,200.00.

The landlord submitted that when he could not get a hold of the tenants, he attended the property on August 15, 2021. When he arrived, he stated that the patio doors were open, and he found significant damage to the property.

The landlord has provided Condition Inspection Reports, including several photographs, recording the condition of the rental unit at the start and end of the tenancy. Also, in support of their claim, the landlord has submitted invoices for the items claimed.

The landlord described repairs required to address the condition of the rental unit, on their Application for Dispute Resolution, as:

“Remove drywall and baseboard damaged by dog and soaked in urine. Replace with new drywall and baseboard and paint. Replace lower-level floor destroyed by dog urine. Patch and paint walls in middle floor, upper level and hallways and staircases. Remove garbage. Remove and dispose of fence illegally

constructed on strata corporation property by the tenants.....replace garage door remote. Re-key doors and mailbox. Full cleaning.”

The landlord seeks compensation in the amount of \$5,139.85 broken down as follows:

Description	Amount
Flooring	\$1,858.38
Cleaning	\$294.00
Recycling	\$100.00
Fence Removal	\$262.50
Drywall/Baseboard removal	\$525.00
Drywall/Insulation/Vapour Barrier installation	\$682.50
Paint lower level	\$367.50
Patch/Paint walls – upper level/main	\$157.50
Re-caulk shower in ensuite	\$78.75
Repair blinds in living room	\$78.75
Remove garbage	\$210.00
Meeting with tenant to return personal items	\$52.50
New mailbox keys	\$262.50
New Garage Door opener	\$210.00
Total	\$5,139.85

In addition, the landlord seeks \$1,600.00 for liquidated damages for the tenants vacating the rental unit prior to the end of the one-year fixed term. The landlord submitted this was the actual costs associated with re-renting the unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 (1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act*, to deduct all or a portion of the rent.

I am satisfied, based on the landlord's undisputed evidence and testimony that the tenants failed to pay rent for the month of August 2021, pursuant to Section 26 of the *Act* and the landlord is entitled to recover this loss from the tenants.

Section 37 of the *Act* stipulates that 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.

From the landlord's testimony and documentary evidence I am satisfied the landlord has established that the tenants failed to comply with the requirements set forth in Section 37 of the *Act*. Specifically, I find the tenants failed to leave the rental unit reasonably clean and undamaged. I am also satisfied the landlord has established the value of the loss in the amounts claimed, with one exception.

The landlord claims \$52.50 for meeting with the tenant to return some items to the tenant. I find this to be a cost of doing business and therefore not subject recovery from the tenants. I dismiss this portion of the landlord's claim.

Section 44 of the *Act* stipulates that a tenancy ends if a tenant vacates the rental unit. I am satisfied from the landlord's evidence that the tenants vacated the property on or before August 15, 2021. As such, and pursuant to the tenancy agreement, I find the tenants are responsible for the payment of liquidated damages.

I accept that the actual cost to the landlord to re-rent the unit to another party was in the amount of \$1,680.00 and I grant the landlord the amount claimed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$10,067.35** comprised of \$3,200.00 rent owed; \$1,680.00 liquidated damages; \$5,087.35 and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$8,467.35**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 13, 2022

Residential Tenancy Branch