



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The former Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for monetary compensation under s. 67 for damages caused by the Tenants to the rental unit;
- An order for monetary compensation under s. 67 for unpaid rent;
- An order for monetary compensation under s. 67 for money owed; and
- An order under s. 72 for return of the filing fee.

The Landlord advances its monetary claims against a security deposit and a pet damage deposit paid by the Tenants.

R.N. appeared as agent for the Landlord. The Tenants did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord’s agent confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Tenants were served with the Notice of Dispute Resolution and the Landlord’s evidence by way of registered mail sent on November 16, 2021. The Landlord’s agent confirmed the registered mail packages were sent to the

forwarding address provided by the Tenants at the end of the tenancy. Tracking information provided by the Landlord indicates the registered mail packages were not retrieved by the Tenants.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the Notice of Dispute Resolution and evidence by way of registered mail under s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*.

Accordingly, I find that the Landlord served the Tenants with the application materials in accordance with s. 89 of the *Act* by way of registered mail sent on November 16, 2021. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord's application materials on November 21, 2021.

Preliminary Issue – Amending the Style of Cause

At the outset of the hearing, the Landlord's agent indicated that there was a typographical error in the Tenant's name. He confirmed the name of the Tenant J.S. was misspelt and asked that the application be amended to reflect the Tenant's name as listed in the tenancy agreement.

Pursuant to Rule 4.2 of the Rules of Procedure, I may amend an application at the hearing in circumstances that can reasonably be anticipated. I find that such circumstances are present here. I accept that the spelling of the Tenant's name was an error and note that the co-Tenant's name was correctly spelt as per the tenancy agreement. The Tenant J.S. would have known the application was in relation to her as it lists her co-tenant, the rental unit address, the landlord, and was sent to her via registered mail. There is no prejudice in allowing the amendment.

Accordingly, I amend the Landlord's application pursuant to Rule 4.2 of the Rules of Procedure such that the Tenant J.S.'s be corrected and reflect the spelling within the tenancy agreement.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order compensation for damages caused by the Tenants?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to a monetary order for money owed by the Tenants?
- 4) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord's agent confirms the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on October 1, 2020.
- The Landlord obtained vacant possession of the rental unit on October 28, 2021.
- Rent of \$1,950.00 was payable on the first day of each month.
- A parking fee of \$25.00 was payable on the first day of each month.
- The Landlord holds a security deposit of \$975.00 and a pet damage deposit of \$975.00.

A copy of the tenancy agreement and parking addendum was put into evidence by the Landlord confirming these details. The Landlord's agent further advises that clause 10 of the tenancy agreement imposes a \$25.00 fee in the event that the Tenants breached their obligation to pay rent as per the agreement.

The Landlord provides a copy of the move-out inspection report and indicates the Tenants provided the Landlord with their forwarding address on October 28, 2021 as part of the move-out inspection. No copy of the move-in inspection was provided. The Landlord's agent advised that the present Landlord recently purchased the property and that some of the documents from the previous landlord did not transfer with the ownership. The Landlord's agent indicates that the previous landlord had conducted

move-in inspections as part of their practice but that for this particular tenancy the move-in condition inspection report was not provided to the new Landlord.

The Landlord's agent advised that the Tenants failed to pay rent and the parking fee on October 1, 2021. A copy of a 10-Day Notice to End Tenancy was put into evidence as well as a notice to vacate signed by the Tenants. I am told that the Tenants made no partial payments on their rent and parking obligation. The Landlord seeks \$1,950.00 for October 2021 rent, \$25.00 for the October 2021 parking fee, and \$25.00 for the fee imposed by clause 10 of the tenancy agreement. A copy of the rent ledger for the Tenants was put into evidence by the Landlord.

The Landlord seeks the following damages which they say were caused by the Tenants:

- Carpet Cleaning: \$147.00
- Cleaning Cost: \$472.50
- Painting/Patching: \$588.00

The Landlord provides copies of invoices with respect to the amounts claimed. The Landlord's agent says that the walls were particularly damaged and were beyond mere wear and tear. I am told by the Landlord's agent that it is not their practice to seek compensation for general wear and tear and that the extent of the damage to the walls was such that they seek compensation from the tenants with respect to this amount. The Landlord provides photographs of the rental unit at the end of the tenancy, however, their resolution is of a poor quality.

Analysis

The Landlord seeks monetary orders for unpaid rent, damages to the rental unit, and for other money owed. The Landlord claims these amounts against the security deposit and pet damage deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit for damages to the rental unit if the application is made outside of the 15-day window established by s. 38.

Upon review of the application and consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord's application was filed on November 10, 2021. The Landlord indicates they received the Tenants' forwarding address on October 28, 2021. I find that the Landlord filed their application within the 15-day window imposed by s. 38(1) of the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Based on the undisputed evidence of the Landlord, I find that the Tenants breached their obligation under the tenancy agreement to pay rent and the parking fee on the first of the month, in this case on October 1, 2021. I note that a tenant's obligation to pay rent is further reinforced by s. 26 of the *Act*. The Landlord advises and I accept that the Tenants made no partial payments on their rent. The Landlord could not have mitigated their damages under the circumstances as the Tenants continued to reside in the rental unit until October 28, 2021. Accordingly, I find that the Landlord is entitled to an order for unpaid rent in the amount of \$1,975.00 (\$1,950.00 for rent + \$25.00 for parking)

I further accept the Landlord's undisputed evidence that clause 10 imposes a \$25.00 fee for non-payment of rent and that it was triggered by the Tenants' failure to pay rent on October 1, 2021. I note such fees are permissible under the *Act* and s. 7 of the Regulations. I find that the Landlord is entitled to an order for the fee of \$25.00, which is imposed by clause 10 of the tenancy agreement.

The Landlord's agent advises that the carpets required cleaning as too did the rental unit. The Landlord's agent further advises that the walls were damaged to the extent that they required painting and patching and were beyond mere wear and tear. Section

37 of the *Act* imposes an obligation on tenants to return a rental unit to the Landlord in a reasonably clean and undamaged state except for reasonable wear and tear.

I have reviewed the condition inspection report and it indicates that the carpets needed cleaning but notes that all the other items are in good condition. None of the items listed in the move-out condition inspection report list that the rental unit required cleaning. I note that the move-out condition inspection report was signed by the Tenants and the Landlord's representative.

Section 21 of the Regulations states that a condition inspection report completed in accordance with the *Act* and the Regulations is evidence of the state of repair and the condition of the rental unit when it was completed unless the landlord or tenant proves otherwise with a preponderance of evidence. In other words, condition inspection reports are persuasive evidence of the state of the rental unit barring evidence proving the contrary.

I have reviewed the Landlord's photographs, the move-out condition inspection report, the Landlord's invoices, and considered the testimony of the Landlord's agent. In consideration of s. 21 of the Regulations, I place significant weight on the move-out condition report. The photographs provided by the Landlord are of poor quality and I am unable to verify that the condition inspection report was incorrect. I am unwilling to displace the evidentiary weight of the move-out report based strictly on the oral testimony of the Landlord's agent. There is insufficient evidence to displace the evidentiary weight to be accorded to the move-out condition inspection report.

I find that the Landlord has established that the carpets needed cleaned as the Tenants breached their obligation under s. 37 of the *Act* to return this aspect of the rental unit in a reasonably clean state. This is confirmed by move-out inspection report. I cannot grant the Landlord's claims for painting and cleaning costs as the move-out inspection report does not support these amounts. I find that the Landlord has failed to prove their claim with respect to the amounts for painting and cleaning the rental unit and these portions of the claim are dismissed without leave to reapply.

I accept the Landlord's evidence with respect to the carpet cleaning in the form of the invoice provided. I find that the Landlord's are entitled to \$147.00 for damages caused to the rental unit by the Tenant.

Conclusion

I grant the Landlord's application in part and make the following monetary orders:

- \$1,975.00 for unpaid rent;
- \$25.00 for other money owed pursuant to clause 10 of the tenancy agreement;
and
- \$147.00 for damages caused to the rental unit by the Tenants.

The other portions of the Landlord's claims for damages to the rental unit are dismissed without leave to reapply.

As the Landlord was largely successful in their application, I find that they are entitled to their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee.

In partial satisfaction of the total amount owed by the Tenants, I direct pursuant to s. 72(2) of the *Act* that the Landlord retain the security deposit and pet damage deposit they hold in trust for the Tenants.

I make a monetary order taking the following into account:

Item	Amount
Unpaid rent	\$1,975.00
Fee under clause 10 of the tenancy agreement	\$25.00
Damages caused by the Tenant	\$147.00
Landlord's filing fee to be paid by Tenants	\$100.00
Less the security deposit and pet damage deposit to be retained by Landlord as per s. 72(2)	-\$1,950.00
Total Owed by the Tenants	\$297.00

Pursuant to s. 67 of the *Act*, I order that the Tenants pay **\$297.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed with 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: May 17, 2022

Residential Tenancy Branch