



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property
Management and [tenant name suppressed to protect privacy]

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 landlord 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 security and pet damage deposits (the deposits), under section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:59 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by manager TV (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 she understands the parties are not allowed to record this hearing.

The landlord received the tenants' forwarding address via email on September 21, 2021. The landlord submitted the email into evidence.

The landlord served the application and evidence (the materials) by registered mail on October 09, 2021. The tracking numbers and the forwarding address are recorded on the cover of this decision. The landlord affirmed tenant RD verbally confirmed the tenants received the materials.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the tenants in accordance with section 89(1)(c) of the Act.

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 tenants are deemed to have received the materials on October 14, 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 respondents.

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 retain the deposits?
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 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 parties entered into a fixed-term tenancy from October 01, 2020 to September 30, 2021. Monthly rent of \$3,200.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence:

4.1. To pay rent as set out on the due date; and to pay for electricity, gas, water/sewer, telephone, internet and cablevision (if applicable). The Tenant shall also pay the Landlord an additional Twenty-five Dollars (\$25.00) NSF Fee for each payment which is returned to the Landlord due to there being insufficient funds In the account of the Tenant to cover such payment. The Tenant will also pay Twenty-five Dollars (\$25.00) Late Fee for each rent payment that is not delivered to the Landlord by the 1st of each and every month of this Tenancy Agreement;

[...]

4.10 To leave the Premises in good repair and have the carpets professionally cleaned at the end of the tenancy. If the carpets are not cleaned, the Landlord may pay the cost of the carpet cleaning from the security deposit.

The landlord attached a ten day notice to end tenancy for unpaid rent on the rental unit's front door on September 03, 2021. The landlord noticed the rental unit was not occupied and the front door was not locked. The landlord attached a notice of final opportunity to schedule a move out inspection (submitted into evidence) on the rental unit's front door on September 13, 2021 and conducted a move out inspection alone on September 20, 2021 at 1:00 P.M.

The landlord stated the tenants did not authorize the landlord to retain the deposits. The landlord submitted this application on October 05, 2021.

The landlord is claiming \$1,600.00 for half of the unpaid rent of September 2021, as the tenants did not pay September 2021 rent. The landlord decided to claim only half of the rent owed.

The landlord is claiming \$25.00 for the not sufficient funds (NSF) fee and an extra \$25.00 for the September 2021 rent not paid. The landlord testified the tenant authorized payment of rent via pre-authorized debt and the payment of September 2021 rent was not possible because there were not sufficient funds in the tenants' account. The landlord submitted a ledger indicating the tenant did not pay September 2021 rent in the amount of \$3,200.00, the NSF and the late fee in the amount of \$25.00 for each fee.

The landlord is claiming \$453.60 for garbage removal expenses, as the tenants abandoned several items in the single family, 5 bedroom, 2,900 square feet rental unit. The landlord hired a company to remove metal scraps, broken windows glass, an old stove and pieces of wood and transport them to the dump. The landlord submitted into evidence six photographs taken during the move out inspection showing metal scraps, furniture, an old stove and garbage in the rental unit. The move out inspection (the report) states: "Place was abandoned, place needed a good cleaning, maybe even some painting + carpets need cleaning + rubbish removal, landscaping, garbage cans".

The landlord submitted an invoice dated September 22, 2021 indicating:

5 Hours x \$55.00/hr for disposed of garbage left by tenant in the house, yard, shed,
garage and garbage containers = 275.00
Dump fee = 157.00
GST = 21.60
Total: 453.60.

The landlord is claiming \$630.00 for cleaning expenses, as the tenants did not clean the rental unit. The landlord submitted a receipt: "21 hours of cleaning at \$30.00 per hour". The report states the kitchen, dining room, main bathroom, master bedroom, second bedroom, 'bedroom 1st west' and bedroom 3 were dirty when the tenancy ended:

The landlord is claiming \$425.00 for carpet cleaning expenses, as the carpet had stains in several rooms when the tenancy ended. The report states the carpet was dirty and the landlord submitted three photographs showing a dirty carpet when the tenancy ended. The landlord also submitted a carpet cleaning invoice indicating the amount of \$425.00 to clean the carpets.

The landlord submitted a monetary order worksheet indicating a claim in the total amount of \$3,208.60.

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.

Move out inspection

Section 35(5) of the Act allows the landlord to make the move out inspection and complete the report without the tenant if the tenant has abandoned the rental unit.

Based on the landlord's convincing undisputed testimony, I find the tenants abandoned the rental unit and the landlord learned that the tenants abandoned the rental unit on September 03, 2021. Thus, the landlord could make the move out inspection without the tenants.

The landlord submitted this application within the timeframe of section 38(1) of the Act, as the landlord received the forwarding address on September 21, 2021 and filed this application on October 05, 2021.

Unpaid rent, NSF and late fees

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Residential Tenancy Regulation 7(1) states:

A landlord may charge any of the following non-refundable fees:

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Based on the landlord's convincing uncontested testimony, the tenancy agreement and the ledger, I find the tenants agreed to pay monthly rent in the amount of \$3,200.00, the tenants did not pay rent in September 2021 and are in rental arrears in the amount of \$3,200.00 for September 2021.

Per section 26 of the Act, I awarded the landlord unpaid rent of September 2021 in the amount of \$1,600.00, as the landlord requested this amount.

I award the landlord \$25.00 for the NSF fee and \$25.00 for the late fee for September 2021 rent.

Garbage removal

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.

[...]

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

Based on the landlord's convincing uncontested testimony, the report, the six photographs, and the invoice, I find the tenants failed to comply with section 37(2) of the Act by not removing their belongings when the tenancy ended and the landlord incurred a loss of \$453.60 to remove metal scraps, furniture, an old stove and garbage.

Thus, I award the landlord \$453.60.

Cleaning expenses

Based on the landlord's convincing uncontested testimony, the report and the receipt, I find the tenants failed to comply with section 37(2) of the Act by not cleaning the rental unit when the tenancy ended and the landlord suffered a loss in the amount of \$630.00.

Thus, I award the landlord \$630.00.

Carpet cleaning

I accept the landlord's uncontested testimony that the rental unit's carpet was not clean the carpet when the tenancy ended.

Based on the landlord's convincing uncontested testimony, the tenancy agreement, the report, the photographs and the carpet cleaning invoice, I find the tenants breached clause 4.10 of the tenancy agreement by not professionally cleaning the carpet and the landlord suffered a loss in the amount of \$425.00.

As such, I award the landlord \$425.00 in compensation for this loss.

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.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposits held by the landlord. The landlord is authorized to retain the \$3,200.00 deposits to offset the monetary award.

In summary, the landlord is entitled to:

Expenses	\$
Unpaid rent September 2021	1,600.00
NSF and late fee	50.00
Garbage removal	453.60
Cleaning expenses	630.00
Carpet cleaning	425.00
Filing fee	100.00
Subtotal	3,258.60
Minus deposits	3,200.00
Total monetary award	58.60

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$3,200.00 deposits and grant the landlord a monetary order in the amount of \$58.60.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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: May 17, 2022

Residential Tenancy Branch