



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VMH Properties
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm that they are not using any recording devices for the hearing. The Tenants confirm that they received the Landlord’s application for dispute resolution and evidence.

Preliminary Matters

The Landlord states that although they did not receive any evidence from the Tenants the Landlord wishes to proceed. The Tenant states that they sent their evidence to the Landlord by email. The Tenants did not provide a copy of that email.

Rule 3.15 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure (the “Rules”) provides that evidence that the respondent intends to rely on at the hearing is served on the applicant. Rule 3.16 of the RTB Rules provides that at the hearing the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that

each application was served with all their evidence as required. Given the Landlord's evidence that the Tenants did not provide their evidence to the Landlord and as the Tenants have no supporting evidence of their email to the Landlord with their evidence, I find on a balance of probabilities that the Tenants have not provided sufficient evidence of the service of their evidence to the Landlord. I therefore decline to consider the Tenants' evidence provided to the RTB.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on November 1, 2020 and ended on July 31, 2021. Rent of \$2,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit and \$1,250.00 as a pet deposit. No forwarding address was provided by the Tenants.

The Tenants state that they did not provide their forwarding address to the Landlord as the Landlord had informed the Tenants that the Landlord was not going to return their deposits and was going to retain the deposits. The Tenants state that as a result they did believe it was necessary to provide their forwarding address.

The Landlord states that the Parties mutually conducted a move-in inspection with a completed inspection report provided to the Tenants. The Landlord states that the report was emailed to the Tenants on October 26, 2020 and that the Tenants replied to this email. The Landlord states that the only email received by them on this date was about the move-in date of November 1, 2020. The Tenants state that they did not receive a copy of the move-in inspection.

The Landlord states that the Tenants had agreed to a move-out inspection for 9:00 a.m. on July 31, 2021. The Landlord states that upon arrival at the unit the Tenants were not there and did not show up for the inspection. The Landlord states that they conducted the move-out inspection alone and sent the condition inspection report to the Tenants by registered mail on August 8, 2021 to the dispute address. The Tenants state that they did not receive the move-out inspection report from the Landlord and that no move-out report was provided with the Landlord's evidence package.

The Parties agree that no rent was paid for July 2021. The Landlord claims \$2,500.00. The Landlord states that the tenancy agreement provides for a late rent charge of \$25.00 and the Landlord claims that amount for late July 2021 rent. The Landlord states that the Tenants' rent cheque for July 2021 was returned NSF. The Landlord states that the tenancy agreement provides for a \$25.00 administrative fee for NSF cheques and for a bank charge of \$50.00. The Landlord confirms that they did not provide any supporting evidence of the charge by their bank. The Landlord claims \$75.00 for the July 2021 NSF cheque.

The Landlord states that due to the damages left in the unit and the repairs required for those damages the Landlord was unable to provide the unit to the new tenants whose tenancy was to start on August 1, 2021. The Landlord states that the new tenants did not move into the unit until September 1, 2021. The Landlord claims lost rental income of \$2,500.00.

The Landlord states that the Tenants failed to clean any of the unit at move-out and claims the cleaning costs of \$420.00 done August 5, 2021. The Landlord provides the invoice for these costs. The Tenant states that other than the carpets the unit was professionally cleaned at the end of the tenancy. The Tenant states that they have a receipt for this cleaning. The Landlord states that the Tenants just now sent a text of that invoice. The Landlord provides a copy of the move-out condition report and I note that nothing is marked as unclean.

The Landlord states that the Tenants left junk in the unit and claims \$433.65 as the costs for the junk removal incurred on August 3, 2021. The Landlord provides this invoice along with photos. The Tenant states that because they ran out of packing boxes, they put belongings in garbage bags and left them in the garage expecting the Landlord to provide the Tenants with opportunity to collect these items. Tenant CM states that jewelry and other valuable items were left in the bags. The Tenant states that they were at the unit on July 31, 2021 until 1:30 p.m. and that the Landlord never showed up for the inspection. The Tenant states that Tenant CM was not aware that the valuables were left at the unit until a week after the tenancy ended. The Landlord states that the Tenants never informed the Landlord of any valuable left at the unit until after the Landlord served the application on the Tenants.

The Landlord states that the Tenants failed to have the carpets cleaned at the end of the tenancy. The Landlord states that although the Tenants arranged for a carpet cleaner for July 31, 2021 and although that cleaner came to the unit at 9:00 a.m. that morning the cleaner refused to clean the carpets as the Landlord had not booked the cleaner. The Landlord states that the cleaner was rebooked for August 5, 2021 and that the carpets were cleaned on that date. The Landlord claims the cost of \$328.75 and provides the invoice. The Tenant confirms that the carpets were not cleaned at move-out.

The Landlord states that the Tenants failed to return a visitor's pass and a garage fob. The Landlord claims \$50.00 for the costs to replace the pass and \$150.00 to replace the fob. The Landlord confirms that no receipts for these costs were provided by the Landlord.

The Landlord states that the Tenants left the walls in the living room and upper bedroom damaged by having patched areas of these walls. The Landlord states that the walls required paint as a result. The Landlord claims \$708.40 and provides photos and an

invoice. The Landlord states that the walls were painted prior to the tenancy in the second or third quarter of 2020. The Tenants states that the walls were not freshly painted at move-in and that the walls had been patched but not painted when they moved in. The Tenant states that the Landlord had informed them at the time that the Landlord would paint the walls at a later date but never did.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence that no rent was paid for July 2021 I find that the Landlord has substantiated an entitlement to **\$2,500.00** in unpaid rent.

Section 7(1)(c) of the Regulations provides that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. As the Landlord did not provide evidence of the service fee charged by their bank for the NSF fee, I find that the Landlord is not entitled to the claimed amount of \$50.00 for the July 2021 NSF cheque and I dismiss this claim.

Section 7(1)(d) of the Regulations provides that a landlord may charge (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. Section 7(2) of the Regulations provides that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. As the tenancy agreement provides for a late rent fee of \$25.00, I find that the Landlord is entitled to the claimed amount of **\$25.00**. As the Landlord could only charge either a late fee or the NSF fee of \$25.00 for the July 2021 rent cheque and as the Landlord has been found entitled to the late fee, I find that the Landlord is not entitled to an additional NSF fee of

\$25.00 for the July 2021 rent cheque. I dismiss the claim for an NSF fee of \$25.00 for the same cheque.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and 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. Section 7(1)(a) of the regulations provides that a landlord may charge the direct cost of replacing keys or other access devices. As the Landlord did not provide any evidence of the direct cost of replacing the fob, I find the Landlord has not substantiated that they incurred the costs claimed and that the Landlord is therefore not entitled to the claimed amount of \$150.00 for replacement of the fob. I dismiss this claim. As the Landlord did not provide any evidence of the replacement cost for the visitor's pass, I dismiss this claim.

Given the Landlord's evidence of the move-out condition inspection report that does not set out any unclean areas and the Tenant's evidence of having had the unit professionally cleaned I consider that the Landlord has exaggerated the state of the unit at move-out and that the cleaning costs claimed do not reflect the cleaning required to the unit. As a result, I find that the Landlord is not entitled to the costs claimed. However, given the photos of the unit showing an unclean fridge I find that the Landlord is entitled to a nominal entitlement of **\$25.00** for this miss.

Given the Landlord's photo evidence and the Tenants evidence that not everything was removed from the unit, I find on a balance of probabilities that the Landlord has substantiated that the Tenants failed to remove garbage from the unit. Although the Tenants' evidence is that some of the garbage bags held valuables, given that they were left in garbage bags and the undisputed evidence that the Landlord was not informed of these items left behind until sometime after the Landlord made its application, I find that the Landlord could not have know that there was anything other

than garbage in the bags. Given the Landlord's junk removal invoice I find that the Landlord has substantiated the removal costs claimed of **\$433.65**.

Given the undisputed evidence that the Tenants did not leave the carpets clean and given the Landlord's evidence of costs incurred to clean the carpets I find that the Landlord is entitled to the claimed amount of **\$328.75** for cleaning the carpets.

Policy Guideline #40 provides that the useful life of indoor paint is 4 years. Given the Tenant's evidence that the unit was not freshly painted at move-in and as the Landlord provides no supporting evidence of when the unit was last painted prior to the start of the tenancy I find that the Landlord has not substantiated that the paint was less than 4 years old at the end of the tenancy. I therefore dismiss the claim for painting the unit.

Although the Landlord gives evidence that the carpets were not cleaned until August 5, 2021, given that the carpet cleaning invoice indicates that the cleaning appointment was on July 31, 2021, between the hours of 10 and 12, I find that the carpets were cleaned on that date. As the remaining repairs that the Tenants have been found responsible for were done by August 5, 2021, I find that this was the date to which the Tenants were responsible for the new tenants delayed move into the unit. I did not find the Landlord's evidence of the new tenants not moving in until September 1, 2021, to hold a ring of truth. For these reasons I find that the Landlord has only substantiated lost rental income for the period August 1 to 5, 2021, inclusive, in the amount of **\$403.25**. This amount is based on a per diem rate of $\$80.65 \times 5 \text{ days}$ ($2,500/31 = 86.55$).

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,815.65**. Deducting the combined security and pet deposits plus zero interest of **\$2,500.00** leaves **\$1,215.65** owed to the Landlord.

Conclusion

I **order** that the Landlord retain the **deposit** and interest of \$2,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,215.65**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: July 06, 2022

Residential Tenancy Branch