



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the rental unit, in the amount of \$3,586 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:53 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. The landlord's caretaker/manager ("**CH**") 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that CH and I were the only ones who had called into the hearing.

CH testified she served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail on February 16, 2022 sent to the forwarding address the tenants provided her prior to the end of the tenancy. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with these documents on February 21, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$3,586;
- 2) recover the filing fee; and
- 3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of CH, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2021. Monthly rent was \$1,450 plus \$33 for tenant's insurance (which tenants opted to purchase from the landlord pursuant to the tenancy agreement). The tenants paid the landlord a security deposit of \$725 and a pet damage deposit of \$200, which the landlord continues to hold in trust for the tenants.

The tenancy agreement contained the following term:

7. ARREARS. Late payments, returned and non-sufficient funds checks (NSF) are subject to the then current rate charged for such services by recognized banking facilities in Canada. Notwithstanding the service charge, failure to pay rent on the due date shall be a fundamental breach of this agreement. This Residential Tenancy Agreement requires that rent be paid promptly on any due date. Late fee in the amount of \$25 will be applied to all accounts in arrears and will be charged by the landlord. \$25 fee will apply to any check which is not honored by the bank and will be charged by the landlord.

CH testified that the tenants authorized the landlord to make an automatic withdrawal from their checking account each month for the payment of rent and tenant's insurance.

CH testified that the tenants failed to pay monthly rent for December 2021 or January 2022. On January 10, 2022, the landlord issued the tenants a 10-day notice to end tenancy for non payment of rent. The tenants did not dispute this notice.

The landlord seeks to recover the unpaid rent, insurance fee for December 2021 and January 2022 as well as two \$25 NSF fees.

CH testified that the tenants asked her if they could have a bit more time to vacate the rental unit and assured her that they would be out before the end of January 2022. She agreed to this extension. She testified that she spoke with the tenants in late January 2022 and told them that she would attend the rental unit on January 31, 2022 to conduct a move out condition inspection. The tenants confirmed they would be there.

When CH attended the rental unit on January 31, 2022, the tenants were not there, and had not cleaned the rental unit. She testified that she attempted to call the tenants, but they did not return her phone calls. She testified that the following day, the tenants had disconnected both of their phone numbers.

CH conducted the move out condition inspection in the tenants' absence. She completed a move out condition inspection report, which recorded that the rental unit was not adequately cleaned. A multitude of small items and garbage were left in the rental unit had none of the surfaces in the unit were cleaned.

CH testified that she spent approximately 12 hours (on and off) cleaning the rental unit and additional 3 hours disposing of the garbage and small items (food in the refrigerator, cans, and bottles) left in the rental unit.

The landlord uses an internal tariff rate to calculate the cost of cleaning. It assigns a dollar value to each item cleaned. The landlord tabulated the items cleaned and calculated its monetary loss as a result of the tenant's failure to clean as \$570 which includes three hours at \$25 per hour for disposing of garbage and smaller items left in the rental unit, as well as \$75 for the cutting of new keys (the tenants did not return theirs).

Analysis

Based on CH's testimony supported by the tenancy agreement, I find that the tenants were obligated to pay \$1,450 in monthly rent plus \$33 for tenant's insurance.

The tenants did not pay these amounts for December 2021 or January 2022. Accordingly, I order them to pay the landlord \$2,966.

Additionally, the tenancy agreement authorizes a \$25 fee for late payment of rent. The *Residential Tenancy Regulation* authorize a \$25 administration fee for late payment of rent. I find that the fee in the NSF tenancy agreement meets this definition. Accordingly, I order the tenants to pay the landlord \$50 for the late payment of December 2021 and January 2022 rent.

Based on CH's testimony, supported by the condition inspection report submitted into evidence, I find that that tenants failed to adequately clean the rental unit at the end of the tenancy.

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, 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.

The rental unit was not reasonably clean. Garbage and small belongings were left behind. The floors were dirty, the walls had stains, and the countertops were not cleaned. I accept CH's testimony that she spent 12 hours cleaning the rental unit plus an additional 3 hours removing the garbage and belongings from it.

I also accept CH's testimony that the tenants did not return their keys at the end of the tenancy. I find that \$75 is a reasonable cost for getting new keys cut.

I also find that the amount claimed for cleaning and garbage removal (\$495) to be reasonable, considering it compensates the landlord for 15 hours of CH's work (which works out to roughly \$33 per hour).

As such, I order the tenants pay the landlord \$570 as damages for failure to leave the rental unit reasonably clean and failing to return the keys.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenants pay the landlord \$2,761, representing the following:

Description	Amount
Rent and insurance arrears	\$2,966.00
NSF fees	\$50.00
Cleaning	\$570.00
Filing fee	\$100.00
Deposits credit	-\$925.00
Total	\$2,761.00

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: September 28, 2022

Residential Tenancy Branch