



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord February 25, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Agent appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that hearing packages and the Landlord’s evidence were served on the Tenants by registered mail to the forwarding address provided by the Tenants. The Agent testified that the packages were sent March 10, 2022. The Landlord provided documentary evidence of service with Tracking Numbers 565 and 548 showing the packages were unclaimed.

Based on the undisputed testimony of the Agent and documentary evidence of service, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act") on March 10, 2022. The Tenants cannot avoid service by failing to pick up registered mail. The Tenants are deemed to have received the hearing package and evidence March 15, 2022, pursuant to section 90(a) of the *Act*. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to compensation for damage to the rental unit?
4. Is the Landlord entitled to keep the security or pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent	\$4,600.00
2	Bulb replacement	\$336.00
3	Wall repair	\$350.00
4	Wall painting	\$1,800.00
5	Gate repair	\$280.00
6	Carpet damage	\$2,250.00
7	Polluted HRV filter	\$150.00
8	Smoking and mice issues	\$2,300.00

9	Filing fee	\$100.00
	TOTAL	\$12,166.00

The Landlord submitted a written tenancy agreement between the parties. The tenancy started February 01, 2021, and was for a fixed term ending January 31, 2022. Rent was \$4,600.00 per month due on the first day of each month. The Tenants paid a \$2,300.00 security deposit. The Agent testified that the Tenants paid a \$2,300.00 pet damage deposit.

The Agent testified as follows.

The Tenants returned the key to the rental unit February 10, 2022.

The Tenants provided their forwarding address to the Landlord February 17, 2022, on the Condition Inspection Report (the "CIR").

The Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security or pet damage deposits.

A copy of the CIR was submitted. The parties did a move-in inspection November 14, 2020. The CIR was given to the Tenants in person November 14, 2020.

The parties did a move-out inspection February 10, 2022. A copy of the move-out CIR was sent to the Tenants by email February 10, 2022, and the paperwork was subsequently finalized.

The Landlord is claiming for the following loss and damage.

Item 1, unpaid rent for February. The Landlord is seeking the full rent amount for February because the Tenants did not give proper notice ending the tenancy. The Tenants gave notice ending the tenancy January 03, 2022. The rental unit was posted for rent in February for the same rent amount. The unit was re-rented March 01, 2022. The move-out inspection was done February 10, 2022, and cleaning was required which took until February 17, 2022.

Item 2, to replace light bulbs in the rental unit that were burnt out at the end of the tenancy.

Item 3, to repair damage the Tenants caused to the walls of the rental unit.

Item 4, to paint after repair of the damage caused to the walls of the rental unit.

Item 5, to repair the gate on the property that was broken by the Tenants.

Item 6, to replace carpet in the rental unit that was damaged by cigarette burns and holes on the carpet in the family room and two bedrooms.

Item 7, to hire a professional to clean the HRV filter which was dirty due to the Tenants smoking in the rental unit in breach of the tenancy agreement.

Item 8, to hire cleaners and an exterminator. The Tenants left garbage everywhere on the floor of the rental unit which attracted many mice which were in the house at the end of the tenancy.

The Landlord submitted the following relevant documentary evidence:

- Photos
- Videos
- Invoices, receipts, quotes
- CIR
- Text messages

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the Agent and CIR, I find neither party extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the undisputed testimony of the Agent, I find the tenancy ended February 10, 2022, when the Tenants returned the keys for the rental unit to the Landlord.

Based on the undisputed testimony of the Agent, I find the Tenants provided their forwarding address to the Landlord February 17, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from February 17, 2022. The Application was filed February 25, 2022, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Sections 26 of the *Act* states:

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

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Section 37 of the *Act* states:

(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...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the Agent's undisputed testimony, undisputed position and Landlord's undisputed documentary evidence and, based on these, I find the following.

In relation to Item 1, I accept the Tenants gave notice ending the tenancy January 03, 2022. This notice ended the tenancy February 28, 2022, pursuant to sections 45 and 53 of the *Act*. The Tenants were responsible for paying February rent. Further, the Tenants had possession of the rental unit until February 10, 2022, and I accept the Landlord could not re-rent the unit prior to March 01, 2022, and therefore lost February rent due to the Tenants' breach of section 45 of the *Act*. I accept the Tenants did not pay February rent. I award the Landlord February rent.

I accept the Tenants breached section 37 of the *Act* by failing to address issues in the rental unit and leaving it dirty and damaged as follows:

- Item 2, by not replacing light bulbs that were burnt out at the end of the tenancy
- Item 3, by damaging walls of the rental unit which required repair
- Item 4, by damaging walls of the rental unit which required painting
- Item 5, by damaging the gate on the property
- Item 6, by damaging the carpet in the family room and two bedrooms
- Item 7, by smoking in the rental unit and leaving the HRV filter dirty
- Item 8, by leaving garbage in the rental unit which required cleaners and an exterminator to attend to deal with the mice attracted by the garbage

I accept the Landlord experienced loss due to the Tenants' breaches because I accept the Landlord had to hire people to address the issues and damages and had to purchase items to address the issues and damages. I also accept that the issues and damages devalued the rental unit.

I accept the amounts and valuation of the losses and damages as claimed by the Landlord because the Tenants did not appear at the hearing to dispute these.

I accept the amounts and valuation of the losses and damages are reasonable because the Tenants did not appear at the hearing to dispute this.

I award the Landlord the amounts claimed.

In relation to the filing fee, given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid rent	\$4,600.00
2	Bulb replacement	\$336.00
3	Wall repair	\$350.00
4	Wall painting	\$1,800.00
5	Gate repair	\$280.00
6	Carpet damage	\$2,250.00
7	Polluted HRV filter	\$150.00
8	Smoking and mice issues	\$2,300.00
9	Filing fee	\$100.00
	TOTAL	\$12,166.00

Pursuant to section 72(2) of the *Act*, the Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$7,566.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$7,566.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 16, 2022

Residential Tenancy Branch