



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL, MNDCL, MNRL**

Introduction

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

Authorization to recover the filing fee for this application from the tenants pursuant to section 72;

A monetary order for damages pursuant to section 67;

A monetary order for damages or compensation pursuant to section 67; and

A monetary order for rent pursuant to section 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:30 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. 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.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified she served the tenant TH with the Notice of Dispute Resolution Proceedings package by registered mail to the forwarding address provided to her in writing by TH on March 26, 2020. A copy of the registered mail receipt was provided as evidence by the landlord. The landlord also emailed the Notice of Dispute Resolution Proceedings package to TH on May 4, 2020 in accordance with the Director's Order allowing for service by email dated March 30, 2020 that was in effect at the time.

The landlord served the tenant JV by email to JV's email address on May 4, 2020. The landlord provided a copy of the tenants' application for tenancy depicting the tenants' respective email addresses to prove the validity of the email addresses used for service.

The landlord also provided screenshots of the email messages to each of the tenants displaying the same email addresses. In accordance with section 71 of the Act and the Director's order regarding service by email dated March 30, 2020, the Notices of Dispute Resolution Proceedings are deemed served upon both tenants on May 7, 2020.

Issue(s) to be Decided

Should the landlord's filing fee be recovered?

Is the landlord entitled to a monetary order for damages and/or unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, including text messages, diagrams, miscellaneous letters and e-mails, and the testimony of the landlord, not all details of the landlord's submissions and / or arguments are reproduced here. The principal aspects of the landlord's application has been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on August 15, 2019 and was set to end on August 14, 2020. Rent was set at \$1,280.00 per month payable on the 15th day of each month. A security deposit of \$640.00 was collected by the landlord which she continues to hold.

The landlord gave the following undisputed testimony. The rental unit is the upper unit of a house with an upper and lower unit, newly built in 2016. The condition of the unit was in excellent condition and the condition inspection report signed by all parties at the commencement of the tenancy indicates there is no damage to the unit.

On February 12, 2020, the tenant TH advised the landlord that she no longer wished to remain in the rental unit and gave the landlord a one month notice to end tenancy on February 16, 2020. The remaining tenant wanted to remain living in the rental unit and sought a new roommate to share the space with her, however the remaining tenant was ultimately unsuccessful. The tenants paid rent from February 16 to March 14th and both were moved out of the rental unit by March 15th.

On March 16th, the landlord attended the rental unit and slipped a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under the door and delivered a copy to TH at her forwarding address, provided on TH's notice to end tenancy. That same afternoon, TH called the landlord and advised her she would not come for a condition inspection report. The landlord called the JV, the other tenant the same afternoon and a condition inspection report was scheduled for 11:00 a.m. on March 17, 2020. Later that evening,

JV sent a text message to the landlord advising she would not attend the condition inspection report, that any remaining items are garbage and that the landlord could retain the security deposit to cover the cost of repair or junk removal.

- Damages to the rental unit

The landlord further testified that when they left, the rental unit was dirty and damaged. Photos of the condition of the rental unit were provided in the written statement provided by the downstairs tenant who accompanied the landlord when inspecting it. The landlord claims the following:

- #1 Cleaning \$733.04
- #2 dining table and 4 chairs \$50.00
- #3 Painting the walls \$ 1,600.00
- #4 bedroom door damage \$144.53
- #5 components of sliding door \$18.90
- #6 Post paint cleaning \$80.00
- #7 cleaner & bleach \$15.09
- #8 clamps/hose for dryer \$84.83
- #9 Dryer \$703.92
- #10 key cutting \$5.47

The landlord testified the tenants didn't do any cleaning at all. Every room need a cleaning including walls, doors, floors and windows and all the appliances were dirty, needing cleaning, including the stove, the fridge, the microwave, the dishwasher, the washing machine and the dryer. The landlord hired a professional cleaning company to do the work and that company invoiced the landlord \$733.04 for the work.

The dining table was irreparably damaged as was one of the dining chairs. The cleaner couldn't clean it, so the landlord purchased a second-hand replacement from Craigslist for \$50.00.

Damage to the walls was depicted throughout the unit, as shown in the photographs. The walls had been painted right before the tenants moved in and require a fresh coat after they left, due to the nicks, scratches and holes. The landlord hired a professional painter who charged \$1,600.00, the invoice for the painter was supplied as evidence.

One of the bedroom doors had been kicked in during the tenancy and the landlord purchased a new door to replace it. The receipt for \$144.53 was provided as evidence.

The closet door had come off it's track in the first bedroom, requiring new hardware to make it functional again. The cost for the parts were \$18.90.

After the painters left, the landlord noticed the oven hadn't been cleaned and the space behind the kitchen appliances was not cleaned. A second cleaning cost \$80.00 and the cleaner's invoice was provided.

When the tenants left, the dryer had a foul smell of mildew. As well, the dryer had extensive marks from a felt pen being tumbled in it. The landlord tried to remove the stains and the mildew smell using cleaners and bleach however the stains and smell couldn't be removed. Also, the landlord testified the dryer vent hose went missing during the tenancy. The landlord seeks \$15.00 for the cleaning supplies, \$84.83 to replace the clamps and hose for the dryer and \$703.92 for a replacement dryer of the same brand.

Lastly, the landlord testified only one of two keys was returned at the end of the tenancy. A second key was cut at the cost of \$5.47.

- Costs incurred for pursuing claim against tenants

The landlord provided copies of receipts to show she purchased ink, stationary supplies and printing services to prepare for this hearing. The total for the supplies, excluding the filing fee is \$590.93.

- Compensation for breaking fixed term tenancy

The landlord seeks compensation for unpaid rent from the time the tenants vacated the rental unit on March 15th to the time she was able to have a new tenant occupy the unit on June 15th, a period of three months. The landlord testified she spent 40 days in finding tradespeople to make the unit ready for occupancy however it was difficult to do during the pandemic. On April 22nd, the landlord placed her first advertisement on Facebook seeking a new tenant at \$1,400.00. A second online advertisement was placed on a different site, also for \$1,400.00 on April 23rd.

On May 8th, the landlord lowered the asking price for the unit to \$1,313.00 per month, without the garage included. A new tenant was found on May 15th, and this tenant entered into a tenancy agreement commencing June 15th for \$1,363.00, including the garage.

The landlord provided a list of comparable rental units in the vicinity of hers. The landlord testified that 2 bedroom listings in this location, close to a university should cost in excess of \$1,400.00 per month and the landlord supplied comparable listings posted on social media and the internet as evidence. The landlord testified that this rental unit is newer (2016) and in a more desirable location. She received over 20 responses to her listing on Facebook, however found each of the potential renters unacceptable for reasons such as lack of references, poor credit history, having pets or too many occupants for a 2 bedroom unit. Others were students who were interested in the unit commencing in September when the school season started, which the landlord found unacceptable.

Analysis

- Damages to the rental unit

Section 37 of the *Act* requires every tenant to leave a rental unit “reasonably clean” at the end of the tenancy and a landlord may seek the cost to bring the unit up to a state of reasonable cleanliness.

Residential Tenancy Branch Policy Guideline PG-1 was written to provide guidance to landlords and tenants regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

*The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. **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 or Manufactured Home Park Tenancy Act (the Legislation). (emphasis added)*

Specifically, PG-1 notes:

MAJOR APPLIANCES

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

WALLS

Cleaning:

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

- 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures /mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*
- 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.*
- 3. The tenant is responsible for all deliberate or negligent damage to the walls.*

The tenant did not attend the hearing to present any evidence to contradict the landlord's testimony that the rental unit was not left 'reasonably clean' at the end of the tenancy. I have viewed the photographs provided of the condition of the appliances and walls and conclude that the rental unit was not left 'reasonably clean' as required by section 37 of the Act. The landlord is awarded \$733.04, plus the second \$80.00 for cleaning. The landlord is also awarded \$1,600.00 for painting the walls.

The landlord provided compelling photographic evidence of the damage to the dining table and chairs as well as providing evidence of mitigating her damages by purchasing pre-owned replacements. I award the landlord \$50.00 for the dining table and chairs.

Again, based on the undisputed testimony of the landlord and the evidence supplied to corroborate her claim, I am satisfied the tenants damaged the bedroom door and the closet door track hardware. I award the landlord \$144.53 and \$18.90.

I accept the landlord's undisputed testimony that the foul smell and the ink stains inside the dryer were both impossible to remove. I award the landlord the \$15.09 for cleaning supplies purchased to try to remedy the smell and the ink. The landlord seeks replacement cost for a new dryer. Residential Tenancy Branch Policy Guideline PG-40 [Useful life of building elements] states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful

life of the item when calculating the tenant's responsibility for the cost or replacement.

The age of the dryer, original to the unit in 2016, is four years old. According to PG-40, the useful life of a dryer is 15 years. As such, the replacement cost for the dryer is reduced by the effective age of the dryer as: \$703.92 divided by 15 (years), multiplied by 11 (remaining years) = \$516.20. The landlord is awarded \$516.20 for the replacement dryer. The landlord is also awarded the \$84.83 for the dryer vent hose she testified the tenants removed.

Lastly, the landlord provided undisputed testimony that only 1 of 2 keys was returned. I award the landlord \$5.47 as compensation to have a second key cut.

- Landlord's Claim for broken fixed term tenancy

Residential Tenancy Branch Policy Guideline PG-3 deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

- 1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;*
- 2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

...

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

...

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to

re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Residential Tenancy Branch Policy Guideline PG-5 [Duty to Mimimize Loss] states:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- 2. re-rent the unit as soon as possible.*

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

Based on the landlord's undisputed testimony and documentary evidence, I am satisfied the landlord was unable to find tradespeople to make the rental unit marketable until 40 days after the tenants vacated the rental unit. The landlord has provided uncontroverted evidence to satisfy me that the price she sought for the rental after the tenants moved out was reasonable economic rent, given the location of the unit close to a university, the age of the rental unit and the comparable vacant units in the vicinity. The evidence that the landlord received approximately 20 responses to the advertisement at \$1,400.00 per month further indicates the rent sought was suitable to what the market would bear for the locale. I am satisfied the landlord took the steps necessary to mitigate her losses by attempting to rent out the unit as soon as possible at a reasonable economic rent.

Given this finding, the landlord is entitled to compensation for the 3 month period the rental unit was vacant, between March 15, 2020 and June 15, 2020 – the date the tenancy with the new tenant began. As rent was set at \$1,280.00, the landlord is entitled to a monetary order in the amount of (\$1,280.00 x 3 months = \$3,840.00).

- Landlord's claim for expenses incurred (other costs)

An arbitrator's ability to award compensation is restricted by Section 67 of the Act which is limited to claims where damage/loss has stemmed directly from a violation of the

Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the other costs sought by the landlord for printing ink, stationary supplies and printing services to prepare for this hearing. This portion of the landlord's claim is dismissed without leave to reapply.

- Filing fee and security deposit

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenants' security deposit in the amount of \$640.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	amount
Cleaning (\$733.04 + \$80.00)	\$813.04
Painting the walls	\$1,600.00
Dining chair and tables	\$50.00
Damaged bedroom door	\$144.53
Closet track hardware	\$18.90
Cleaning supplies	\$15.09
Dryer	\$516.20
Dryer vent hose and clamps	\$84.83
New key	\$5.47
3 months rent for ending tenancy early	\$3,840.00
Filing fee	\$100.00
Less security deposit	(\$640.00)
Total	\$6,548.06

Conclusion

I issue a monetary order in the landlord's favour in the amount of ~~\$4,948.06~~ **\$6,548.06**.

The tenants must be served with this Order as soon as possible. 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: July 28, 2020

DECISION/ORDER AMENDED
PURSUANT TO SECTION 78(1)(A)
OF *THE RESIDENTIAL TENANCY*
ACT ON AUGUST 12, 2020
AT THE PLACES INDICATED IN
BOLD ON PAGE 9.

Residential Tenancy Branch