



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim.

This hearing commenced on October 27, 2020. The hearing was unable to complete due to lack of time. The interim Decision issued on October 28, 2020, should be read in conjunction with this Decision.

On October 29, 2020 the Residential Tenancy Branch (the “RTB”) provided a copy of my interim decision and the Notice of Hearing scheduled for today’s date(January 19, 2021 @ 9:30am), to both parties by email. This was the method of service confirmed on the original hearing date.

On November 6, 2020, the tenants submitted an email to the RTB to confirm their submission of additional evidence that I Ordered in my interim decision. I am satisfied that the tenants were fully aware that they were required to attend at today’s hearing.

The tenants did not appear on January 19, 2020. The landlord and the landlords’ legal counsel appeared and were ready to proceed. Therefore, the hearing continued in the absence of the tenants.

On October 27, 2020 the hearing the tenants alleged that the landlords received \$300.00 per month for the months of April, May, June, July and August 2020 from the BC Government Rent Subsidy Program. Counsel for the landlord was unable to confirm whether this money was received by the landlord.

In my interim Decision, I made the following order.

“The tenants must submit copies of proof of rent subsidy payments to the landlords for the months of April, May, June, July, and August 2020. This must be submitted to the RTB and a copy sent to legal counsel of the landlord at the email address confirmed at the hearing, no later than November 6, 2020. The landlord will have until November 13, 2020, to submit any rebuttal evidence that is related to the rent subsidy to the RTB and a copy to be sent to the tenants at the email address confirmed at the hearing.”

I find the tenants did not comply with my Order, as on November 6, 2020, the tenants provided only a copy of the rent subsidy payment for June 2020. April, May, July and August 2020, were not provided.

The landlord submitted rebuttal evidence, which show they received rent subsidy for June and July 2020.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began February 15, 2020. Rent in the amount of \$2,000.00 was payable on the last day of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on July 24, 2020, when the tenants were removed by the bailiffs. Filed in evidence is a copy of the tenancy agreement.

The landlords claim as follows:

a.	Bailiff fees	\$ 7,463.00
b.	Unpaid Rent	\$ 8,000.00
c.	Damages to the rental property	\$39,975.00
d.	Filing fee	\$ 100.00
	Total claimed	\$55,538.00

Counsel for the landlord submitted that they are waiving any amount that exceeds my authority of \$35,000.00.

Bailiff fees

Counsel for the landlord stated that on May 22, 2020 the landlord application to end the tenancy early and obtain an order of possession was heard. Counsel submits that the Arbitrator found that the tenants had caused significant damage to the rental unit and unreasonable disturbed another occupant and the landlord was granted an Order of Possession, effective 2 days after served upon the tenants. Filed in evidence is a copy of the Decision and Order of Possession. I have noted the filed number on the covering page of this decision.

Counsel submits the tenants did not comply with the Order of Possession and the landlord had to obtain a Writ of Possession and have the order enforced by the Bailiffs. Counsel submits the landlord had to pay the amount of \$7,463.00 to the Bailiffs to have the tenants removed from the property. Filed in evidence is a copy of the Bailiffs invoice.

The tenants testified that they were forced to vacate the rental unit on July 24, 2020 at 3:30 pm. The tenants stated they should not be responsible for the Bailiff fees.

Unpaid Rent

Counsel for the landlord submits that at the start of the tenancy the landlords received the amount of \$4,000.00. This was \$1,000.00 for the security deposit. \$1,000.00 for rent for February 15, to the 28th 2020 and \$2,000.00 was rent for March 2020.

Counsel submits that the only money the landlord received after that date was from the BC Government Rent Subsidy Program and that was \$300.00 for both June and July 2020. No other money was received. Filed in evidence is a detail of account sent from the BC Government Rental program to the landlord, which shows only June and July 2020, were sent.

Counsel submits that the landlord sent regular emails asking for the rent. Filed in evidence are copies of emails.

The tenants testified that they paid the landlord the balance of the rent every month in cash. The tenants stated that the landlords received money from the BC Government Rent subsidy program for April, May, June, July and August 2020. Submitted in evidence on November 6, 2020, is only a copy of the rent subsidy for June 2020.

The landlord argued that they never received any cash from the tenants other than the original amount given at the start of the tenancy.

Damages to the rental property

The landlord testified that the rental unit was in good condition at the start of the tenancy. Filed in evidence are photographs of the rental unit prior to the tenancy commencing.

The landlord testified that the tenants cause extreme damage to the rental unit and were evicted from the premise by the Bailiffs on July 24, 2020.

The landlord testified that the rental unit is unlivable due to the damage caused by the tenants. The landlord stated that the damage to the interior of the rental unit was as follows:

- Interior doors were broken;
- Interior windows broken and the framing bent or cracked;
- Cabinet doors broken;
- Pipes under the kitchen and bathroom sink cut off;
- Floors damaged;
- An extreme number of holes punched or kicked into the walls;
- A large amount of garbage; and
- The premise was left extremely dirty.

The landlord stated that the damage to the exterior of the rental unit was as follows:

- Screen doors were removed and broken;
- Shutters were broken by being pulled;
- Down spouts pulled off the gutters;
- 2 motion detectors broken; and
- The siding was damage in various spots, which included a metal rod being stuck through the siding and entering the interior of the home, causing internal damage to water barrier and the vapor barrier.

The landlord stated that the damage was so extreme that they had to bring in the restoration company to determine the cost to repair the damage. Which also included an asbestos assessment as the drywall was so damaged,

Filed in evidence are photographs taken by the Bailiffs and the landlords at the end of the tenancy. The photographs support the rental unit was severely vandalized by the tenants.

Filed in evidence is a Repairs Scope and Estimate Report from the restoration company. The total cost of repairs is the amount of \$39,975.00 plus Gst.

The landlord stated that they have not been able to have the repairs made as they have no money left after paying all the Bailiff fees and legal counsel costs.

The tenants did not appear to give testimony on this issue. Nor did they file any documentary evidence on this issue.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Bailiff fees

In this case, the landlord received an Order of Possession on May 22, 2020. The tenants were required to give vacant possession of the said property within 2 days to

the landlord. The tenants failed to comply with the Order of Possession and the landlord had no alternative but to have the tenants removed by the Bailiffs. I find the tenants breached the Act, when they failed to comply with section 55 of the Act, and this caused losses to the landlords. I find the landlord is entitled to recover the cost of the Bailiff fees in the amount of **\$7,463.00**.

Unpaid Rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.*

...

In this case, I do not accept the evidence of the tenants that they paid all rent in cash or that the landlords received rent subsidy for April, May and August 2020, for the following reasons.

The tenants provided no evidence that they had the funds to pay the rent, such as bank statements or that this money was withdrew from their bank account. The tenants submitted no evidence of dates, or times these payments were alleged to have been made.

Further, I have read the email dated April 10, 2020 that was written by the tenant CK, in regard to rent, in part it reads as follows,

“...Filled out the Paperwork which when it Goes into my bank Ban it will be Transferred by bank draft into your account by E-Transfer”

This email does not support that rent was paid or that it was paid in cash as rent was going to be paid by etransfer. Which would have been reasonable due to the state of emergency.

I have also read other emails sent to the tenants by the landlord requesting rent for April and May 2020. If rent was paid in cash as stated it would have been reasonable for the

tenants to respond to those emails stated that cash was given on certain date. Rather than to ignore the emails.

In addition, the tenants alleged that the landlords received rent subsidy for April, May, June, July and August 2020. The tenants were given the opportunity to provide copies of the said payments, which they did not. The only copy that was given after they had the opportunity was for June 2020. Which I accept the landlord received the rent subsidy for June and July 2020, as the landlord admitted those were received. Furthermore, the detail records from the rent subsidy program show only these two amounts were sent to the landlords.

I find the tenants failed to pay for April, May, June and July 2020 in the total amount of \$8,000.00. The amount of the rent subsidy received by the landlords totaling \$600.00 will be applied. Therefore, I find the landlords are entitled to recover unpaid rent in the total amount of **\$7,400.00**.

Damages

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I accept the undisputed evidence of the landlord that the tenants caused significant damage to the rental unit as stated above. The before pictures of the premise show the rental unit was in good condition just prior to the tenancy commencing.

The photographs taken by the Bailiffs and the landlords show an extremely dirty and damage rental unit, that was caused by vandalism. Vandalism is a criminal offense.

The pictures of the interior of the rental unit show the interior doors were broken, windows smashed, the drywall had so many holes that were from being punched or

kicked, it would be impossible to count. Cabinet doors were broken, and the rental unit was left so dirty and damaged it was uninhabitable.

The picture of the exterior of the premise shows exterior doors broken, damage to siding, down spouts and a steel pipe was used to pierce the siding, which went into the interior of the premise.

The landlord has filed in evidence a repair scope and estimate of cost from a restoration company. The estimate of the repair is \$39,975.00, plus GST. I find that is reasonable based on the damage caused.

In most circumstances when an item is accidentally damaged during a tenancy, I would apply the useful life of a building element as per the Residential Tenancy Policy Guideline 40. However, I find that would be inappropriate, unreasonable and unfair to do so, as this was intentional vandalism of the landlords' property.

Based on the above, I find the landlords are entitled to recover the cost of the estimate for repair in the amount of. **\$39,975.00.**

I find that the landlords have established a total monetary claim of **\$54,938.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,000.00** in partial satisfaction of the claim, this leaves the amount of \$53,938.00, which is outside my jurisdiction. However, at the outset of the hearing the landlord's legal counsel on behalf of the landlord abandoned any amount that was over the amount of \$35,000.00 to keep it within the Residential Branch jurisdiction.

As the landlord has abandoned part of their claim in the amount of \$18,938.00. I find it appropriate to grant the landlords a monetary claim of **\$35,000.00**, pursuant to section 67 of the Act.

I further order that the landlord may serve a copy of this Order on the tenants by email at the email address provided in the original substituted serve order and once emailed the order is deemed to have been sufficiently served, pursuant to section 71 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: January 20, 2021

Residential Tenancy Branch