



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd. c/o Sea &
Stream and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenants: CNR-MT, FFT, PSF, AAT
For the landlord: MNRL-S, OPR, MNDCL-S, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, under section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit (the deposit) in satisfaction of the monetary order requested, pursuant to section 72;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:59 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. The landlord, represented by agents KO (the landlord), PL and CK, 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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue - Tenants' application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenants, I order the tenants' application dismissed without leave to reapply.

Preliminary Issue - Service of the Landlord's application

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on January 27, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on February 01, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Order of Possession

At the outset of the hearing the landlord informed me she obtained an order of possession on March 06, 2020. The previous application file number is listed on the cover page of this decision. The landlord did not serve the order of possession and the tenants continue to occupy the rental unit.

The application for an order of possession is moot since the landlord already has an order of possession.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenants' deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate their application.

The landlord affirmed the tenancy started on July 02, 2019. Monthly rent is \$1,600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 was collected. The landlord holds the deposit in trust.

A copy of the tenancy agreement was submitted into evidence. It states:

2. Rent is due and payable monthly before or on the FIRST day of each month. The Tenant(s) agrees to pay an additional \$25.00 per for any late payments, and an additional \$25.00 per for any NSF cheques.

The landlord testified the tenants did not pay rent in December 2019, January and March 2020 and paid \$1,300.00 for November 2020 rent. The tenants are in arrears for unpaid rent in the amount of \$5,100.00 (item 1 in the monetary order worksheet). The landlord submitted into evidence a statement of rental account indicating the tenants did

not pay rent in December 2019, January and March 2020 and paid \$1,300.00 for November 2020 rent.

The landlord stated April 2020 rent was paid on April 10, 2020. The landlord is claiming for the late payment fees of \$25.00 for the unpaid rent of March 2020 and late payment of April 2020 in the total amount of \$50.00 (item 2).

The landlord said the tenants reported a pest infestation in July 2020. The landlord hired a pest control specialist to perform the necessary treatment in the rental unit. The tenants did not allow the pest control specialist to enter the rental unit. The pest control specialist charged the landlord the amount of \$86.10 in September 2020 and \$84.00 in October 2020 for the refused service (invoices submitted into evidence). The landlord is claiming for compensation in the amount of \$170.10 (items 3 and 4).

The landlord's total monetary order claim is for the amount of \$7,020.10.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Unpaid rent (item 1 in the monetary order worksheet)

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenants to pay monthly rent of \$1,600.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony and the statement of rental account, I find the tenants are in arrears for \$4,800.00 for the months of December 2019, January and March 2020 and \$300.00 for the balance of November 2020, in the total amount of \$5,100.00.

Late payment fee (item 2)

Section 7(1)(d) of the Residential Tenancy Regulation allows an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Policy Guideline 04 notes a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

I accepted the landlord's uncontested testimony that the tenant did not pay rent in March 2020 and paid rent late in April 2020 and award the landlord \$50.00 for the late payment fee for the months of March and April 2020.

Pest control (items 3 and 4)

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I accept the landlord's uncontested evidence that the tenants did not authorize the pest control specialist to enter the rental unit and caused the landlord to pay the fee in the amount of \$170.10 for the two refused services.

As such, I award the landlord \$170.10 in compensation for this loss.

Filing fee and Summary

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit. I order the landlord to retain the \$800.00 deposit.

In summary:

December 2019, January and March 2020 rent (\$1,600.00 per month)	\$4,800.00
Balance of November 2020 rent (\$1,600.00 - \$1,300.00)	\$300.00
Late payment fee	\$50.00
Pest control	\$170.10
Filing fee	\$100.00
Subtotal	\$5,420.10
Subtract deposit	-\$800.00
Monetary award	\$4,620.10

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$800.00 deposit and grant the landlord a monetary order in the amount of \$4,620.10.

The landlord is provided with this order in the above terms and the tenants must be served with **this order**. 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: March 12, 2021