



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- 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 and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:44 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agent AH (the landlord), 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.

I accept the landlord's testimony that the tenants were individually served with the application and evidence (the materials), by registered mail on November 19, 2020, in accordance with section 89(2)(b) of the Act. The packages were mailed to the forwarding address provided in writing by the tenants on November 04, 2020 (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 tenant is deemed to have received the materials on November 24, 2020, 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.

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 all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate his claims.

The landlord affirmed the tenancy started on July 01, 2020 and ended on October 29, 2020. Rent was \$2,800.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 were collected and the landlord holds them in trust. The tenancy agreement, the addendum and form K were submitted into evidence. The addendum and form K state:

(addendum) 10. Tenant's dog is not allowed to urinate or defecate in the common area including the patio on the 7th floor and inside the rental unit.

(form K) 1. Under the Strata Property Act, a tenant in a strata corporation must comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).

The landlord stated the tenants did not pay the move in fee in the amount of \$400.00. The strata letter dated July 21, 2020 states:

As per our records and the Form K submitted, a new tenancy began in your unit as of July 1, 2020. The \$400 move fee, as per the Bylaws, has not been received for the move in. Please have a cheque made payable to [strata].

The landlord testified the tenants did not pay rent for October 2020 and are in arrears for \$2,800.00.

The landlord submitted a prior application to the RTB and obtained an order of possession and a monetary order dated September 28, 2020. The landlord has included the \$100.00 filing fee for this prior application in the current application. The landlord

served the order of possession and the monetary order, but the tenants did not leave the rental unit. The landlord paid \$120.00 for a writ of possession and \$4,200.00 for the bailiff to evict the tenants (both receipts submitted into evidence).

The landlord emailed the tenants on October 14, 2020:

I think you should have received the attached decision from RTB. Your application for review of Order of Possession has been dismissed by RTB. They have confirmed the original Order of Possession which has been served to you by registered mail.

As per your request in the previous email, you wish the owner can extend the date to take possession. In order for you to have enough time to find a new place, move out smoothly and deliver complete vacant possession of the above mentioned property, the owner can extend the date to October 26, 2020. However, the followings have to be deducted from security deposit and pet deposit:

1. October prorated rent
2. \$400 move in fee
3. \$100 filing fee as awarded by RTB in the Monetary Order.
4. \$200 bylaw fines as per attached letter from Rancho.
5. Cleaning cost and damages responsible by you, if any.

Please reply by email to agree the move out date of October 26, 2020 or earlier before tomorrow. If you don't agree or don't reply before tomorrow, we shall enforce the Order of Possession through the court and you will be responsible for all related costs.

The landlord stated the tenants did not clean the rental unit when the tenancy ended. The tenants left garbage all over the 900 square feet 2-bedroom rental unit. The landlord paid a cleaner the amount of \$305.00 for 8 hours of cleaning (receipt submitted into evidence). The landlord submitted into evidence 4 photographs taken on October 29, 2020 showing the rental unit was dirty and in disrepair.

A condition inspection report (the report), signed by the tenants and the landlord on the move in date (June 30, 2020) and signed by the landlord on the move out date (October 29, 2020) was submitted into evidence. It states: "whole suite is full of garbage and very dirty. Note: Tenants were arrested by police and cannot attend move out condition inspection. Case # (informed on the cover page of this decision)."

The landlord affirmed the tenants were arrested on October 21, 2020 and the Police informed the landlord on October 22, 2020 the tenants can not enter the rental building.

On November 13, 2020 the tenants emailed the landlord: "Please let me know what day and time work for a virtual walk through. My forwarding address for the return of the pet deposit of \$1400 and damage deposit \$1400 is (omitted)"

The landlord affirmed the tenants' dog urinated in the elevator and the tenants did not clean up. A strata fine in the amount of \$200.00 was issued on October 02, 2020:

Details of infraction: Residents allowed their puppy to urinate in the elevator and did not clean it up or notify Concierge of the mess. [...]

Having considered the complaint, along with any responses and other pertinent matters, the Strata Council has decided to: Issue a \$200 FINE.

The landlord stated the tenants stored an electric bicycle in the hallway in front of their rental unit door on September 15, 2020. A strata fine (submitted into evidence) in the amount of \$100.00 was issued on November 06, 2020.

The landlord testified the tenants did not return the two electronic keys (fobs) when the tenancy ended and the landlord paid \$150.00 to have the fobs replaced (receipt submitted into evidence). The report indicates the two fobs were not returned when the tenancy ended.

The landlord stated the tenants broke the second bedroom door, the closet door and the wall cover. The report indicates: "broken 2nd bedroom door with big holes, closet doors: dent (needs repair) and broken wall cover". The landlord submitted 2 photographs and a receipt in the amount of \$1,150.00 for the repair of the second bedroom door, the closet door and the wall cover.

The landlord stated the police broke the rental unit front door when the tenants were arrested. The landlord submitted 2 photographs showing the damaged front door. The report states: "Entrance door completely broken by police". The landlord's insurance deductible for the repair of the front door is \$500.00. The insurance only covered the front door repair.

The landlord submitted a monetary order worksheet. The total amount the landlord is claiming is \$10,025.00.

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.

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.

Strata move in fee (claim 3 in the monetary order worksheet)

Based on the landlord's undisputed testimony and section 1 of the form K tenancy agreement addendum, the tenants agreed to pay the move in fee and did not pay this fee.

I find the tenants breached the tenancy agreement by not paying the move in fee in the amount of \$400.00 and the landlord incurred a loss in that amount.

As such, I award the landlord \$400.00 in compensation for this loss.

October 2020 rent (claim 11)

I accept the landlord's uncontested testimony, the tenancy agreement and the email dated October 14, 2020 that the tenants must pay monthly rent of \$2,800.00 on the first day of the month, the tenants did not pay rent due on October 01, 2020 and the tenants occupied the rental unit until October 29, 2020.

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

Based on the landlord's uncontested testimony and the tenancy agreement, I find the tenants are in arrears for the *pro rata* rent of October 2020 in the amount of \$ 2,613.33 (\$2,800.00 / 30 x 28 days).

Eviction costs - writ and bailiff (claims 7 and 8)

Based on the landlord's uncontested testimony, the writ and bailiff receipts, I find the tenants did not comply with the order of possession to vacate the rental unit. The landlord incurred a loss in the total amount of \$4,320.00 (\$4,200.00+\$120.00) because of the tenant's failure to comply with the order of possession and I award compensation for this loss.

Prior application filing fee (claim 2)

The monetary order dated September 28, 2020 includes the amount of \$100.00 for the landlord's prior application filing fee. The recovery of the filing fee for the prior application has already been adjudicated and a decision was rendered.

Thus, the landlord's application for the recovery of the filing fee for the prior application has already been decided and I dismiss this claim.

Cleaning costs (claim 1)

Section 37(2) 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, 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.

Based on the landlord's undisputed testimony, the photographs and the receipt, I find the tenants breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended and the landlord incurred a loss.

I award the landlord compensation in the amount of \$305.00 for 8 hours of cleaning at the hourly rate of \$38.12.

Strata fine – dog (claim 4)

I accept the landlord's uncontested evidence that the tenant's dog urinated in the elevator and caused the landlord to receive a bylaw infraction fine of \$200.00.

I find the tenants breached section 1 of the form K tenancy agreement addendum by not paying the strata fine in the amount of \$200.00 and the landlord incurred a loss in that amount.

As such, I award the landlord \$200.00 in compensation for this loss.

Strata fine – bicycle (claim 5)

I accept the landlord's uncontested testimony that the tenants stored a bicycle in the hallway and caused the landlord to receive a bylaw infraction fine of \$100.00.

I find the tenants breached the tenancy agreement by storing their bicycle in the hallway and not paying the strata fine, thus the landlord incurred a loss of \$100.00.

As such, I award the landlord \$100.00 in compensation for this loss.

Electronic keys replacement (claim 6)

Section 37(2)(b) of the Act requires the tenants to return all keys at the end of the tenancy:

When a tenant vacates a rental unit, the tenant must

....

(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.

I accept the landlord's uncontested evidence that the tenants did not return two electronic key fobs and I award \$150.00 in compensation for this loss.

Doors repair (claim 9)

Section 37(2)(a) of the Act states:

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...

Based on the landlord's undisputed testimony, the receipt, the report and the photographs, I find the tenants breached section 37(2)(a) of the Act by damaging the second bedroom door, the closet door and the wall cover and not repairing the damage.

The landlord incurred a loss to make repairs and I award the landlord \$1,150.00 in compensation for this loss.

Insurance deductible – claim 10

Based on the landlord's undisputed testimony, the report and the photographs, I find the tenants breached section 37(2)(a) of the Act by not repairing the rental unit's front door after it was damaged by the police when they were arrested the tenants. I accept the landlord's evidence that an insurance claim was filed to cover the cost of repairing the door, and the landlord incurred a loss of \$500.00 for the cost of the insurance deductible.

As such, I award the landlord \$500.00 in compensation for this loss.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenants' deposits in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on November 13, 2020 and brought an application for dispute resolution on November 13, 2020, within the timeframe of section 38(1) of the Act.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenants' deposits of \$2,800.00 in partial satisfaction of the monetary award granted.

In summary:

Item	Amount \$
Strata move in fee	400.00
October 2020 rent	2,613.33
Bailiff and writ costs	4,320.00
Cleaning costs	305.00
Strata fine – dog	200.00
Strata fine – bicycle	100.00
Electronic keys replacement	150.00
Door repair	1,150.00
Insurance deductible	500.00
Filing fee	100.00
Minus deposits	2,800.00 (subtract)
Total monetary award	7,038.33

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$2,800.00 deposits and grant the landlord a monetary order in the amount of \$7,038.33.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. 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 09, 2021

Residential Tenancy Branch