Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — Tenant's application submitted on May 19, 2021: MNETC, FFT
Tenant's application submitted on May 28, 2021: MNSDS-DR, FFT
Landlord application: MNRL-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 tenants applied on May 19, 2021 for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee, under section 72.

The tenants applied on May 28, 2021 for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

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

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenants MH (the tenant) and RB represent tenant SH. Landlord JW (the landlord) represents landlord WW. The landlord was assisted by advocate JM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the applications and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Amount of monetary compensation

Both parties agreed that monthly rent was $1,500.00.

The tenants’ application submitted on May 19, 2021 lists the claim is for $16,500.00, equivalent to 11 months of rent. However, the tenants clearly stated they are seeking compensation under section 51(2) of the Act and the landlord responded to the tenants’ claim under section 51(2) of the Act.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not occupy the unit for 6 months.

The amount equivalent of 12 months of rent is $18,000.00.

Per section 59(2)(b) of the Act, I accept the tenants’ application for compensation under section 51(2)(b) of the Act in the amount of $18,000.00.

Preliminary Issue – Correction of the Landlord’s Name

At the outset of the hearing the landlord corrected the spelling of her first name.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord’s application.

Issues to be Decided

Are the tenants entitled to:

- a monetary order in an amount equivalent to twelve times the monthly rent?
- an order for the landlord to return the deposit?

- an authorization to recover the filing fees for both applications?

Are the landlords entitled to:

- a monetary order for unpaid rent?
- a monetary order for loss?
- an authorization to retain the deposit?
- an authorization to recover the filing fee?

Background and Evidence

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

Both parties agreed the tenancy started in December 2017 and ended on May 04, 2021. Monthly rent was $1,500.00, due on the first day of the month. The landlord did not complete a move in inspection report. At the outset of the tenancy a security deposit of $750.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the landlords are JW and WW, the tenant is RB and the occupants are MH and SH.

The tenants rented the basement suite and the landlords lived on the main floor.

Both parties agreed the tenants provided their forwarding address in writing on May 12, 2021 and the landlord received it on that date. The tenants did not authorize the landlord to retain the deposit.

Both parties also agreed the landlords served a two month notice to end tenancy (the Notice) on February 01, 2021. A copy of the Notice was submitted into evidence. It states:

> Reasons for this Two Month Notice to End Tenancy (check the box that applies)
>
> - The rental unit will be occupied by the landlord or the landlord's close family member.

The effective date of the Notice was April 30, 2021.

The tenants are claiming compensation in the amount of $18,000.00 (12 months of rent) because the landlords did not occupy the rental unit after they moved out.

The landlord affirmed she served the Notice because she planned to occupy the rental unit. The landlord sold the rental unit on August 23, 2021.

The landlord is claiming for May 01 to 04, 2021 rent in the amount of $200.00, as the tenants did not pay rent on May 01, 2021. The tenant stated he did not pay rent from May 01 to 04, 2021 because the landlord did not tell them that they would have to pay rent for these days.

The landlord is claiming cleaning expenses in the amount of $380.00 because the tenants did not clean the 1,200 square feet, 2 bedroom rental unit. The landlord testified the rental unit was dirty, the oven, bathrooms, bathroom and fireplace were not clean and had a strong pet urine odour. The landlord submitted photographs taken on May 07, 2021. The landlord said she cleaned the rental unit for 8 hours and she is claiming compensation for her labour in the amount of $160.00. The landlord hired a cleaner and paid $220.00 for 11 extra hours of cleaning at the hourly rate of $20.00 (receipt submitted into evidence). The cleaners letter dated May 18, 2021 states:

> Upon entering the suite we were met with the odour of presumably dog urine instantly, the floors in some areas were stained and saturated with it. With further inspections, before cleaning, we noted stains, dents, and scuffs littering the walls, doors, and baseboards, as well as a significant hole in the drywall in the hallway exiting the living area. It took us over two hours to clean each room as it looked like any cleaning had been neglected for quite some time. Walls. Baseboards, windows, closets, floors. all needed significant cleaning. The window sills were full of bugs and dirt. The floors entailed square foot by square foot scrubbing on hands and knees. The oven was uncleaned and filthy. The cupboards, presumed washed, were somewhat clean but absolutely needed another round and some seemed like they were not cleaned at all. The wood in the suite, meant to be maintained with Murphys oil soap, appeared untouched, dusty, and unconditioned. Overall this space was incredibly dirty and necessitated 11 hours of cleaning following a reportedly clean state. We have done a number of move-out cleans and it took us about the same time and exceeded the amount of cleaning products as it takes to clean a well kept full house belonging to a family of five. This was a two-bedroom.

The tenant affirmed the rental unit was not dirty and that it only needed a “little wipe down”.

The landlord submitted into evidence a condition inspection report (the report) dated May 12, 2021. The parties did not complete the report when the tenancy started and only the landlord signed the report on the move out inspection date.

The landlord is claiming compensation in the amount of $44.36 for the cleaning supplies she purchased to clean the rental unit. The landlord submitted into evidence a cleaning supplies receipt.

The landlord is claiming compensation in the amount of $350.00 for the labour for repairs and painting and $378.37 for the material needed for the repair and painting. The landlord stated when the tenancy started the rental unit was in good condition and the tenants damaged the hallway drywall, the shelf above the kitchen sink and the doorframes.

The landlord submitted a repair quotation in the amount of $2,814.00:

> 2 x Drywall repair: damaged areas cut back to studs, taped and mudded; 2 return visits to sand and fill - Replace shelf above kitchen sink - Replace damaged baseboards in bathroom - Removal and dumping fees of all damaged materials included

The landlord testified she repaired and painted the rental unit in order to mitigate the losses. The landlord submitted into evidence a repair and painting materials receipt in the amount of $387.37. The landlord said the rental unit was painted 6 months before the tenancy started.

The tenant affirmed the hallway was shared with the landlord and that the landlord is responsible for the hallway drywall damage. Later the tenant stated he is responsible for “a little bit of a hole in the hallway” and that the rental unit was in good condition when the tenancy ended.

The landlord submitted into evidence a monetary order worksheet indicating a total monetary claim of $1,352.73.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement

> (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 the case is on the person making the claim.

Report

Section 23(1) of the Act states the landlord and tenant must inspect the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) required the landlord to offer the tenant at least 2 opportunities for the inspection.

Section 24(2) states:

> The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> (a)does not comply with section 23 (3) [2 opportunities for inspection],

Residential Tenancy Branch Policy Guideline 17 states the landlord extinguishes the right to retain or file a claim against a deposit if:

> 7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if9:
> • the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity);

Thus, the landlords extinguished their right to claim against the deposit, per section 24(2) of the Act.

Regulation 20 states the report must contain the date of the move in and move out inspections.

As the landlord did not complete a move in inspection report, I find the report does not comply with regulation 20.

Regulation 21 states:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the report has no evidentiary weight, as the landlord did not complete it in accordance with the Regulation.

Deposit

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

The landlords confirmed receipt of the tenants' forwarding address on May 12, 2021 and submitted this application for an authorization to retain the deposit.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the deposit and did not return the full amount of the deposit within the timeframe of section 38(1) of the Act, the landlords must pay the tenants double the amount of the deposit they retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline. It states:

> 3.Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of $1,500.00 (double the deposit of $750.00).

Residential Tenancy Branch Policy Guideline 13 states:

> If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Based on the tenancy agreement, I find RB is the tenant and the MH and SH are occupants. Thus, I award tenant RB $1,500.00.

12 month compensation

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I accept the landlord's testimony that the Notice was served because the landlord planned to occupy the rental unit. Per section 51(2) of the Act, as the Notice's effective

date was April 30, 2021, the landlord must have occupied the rental unit from May 01 to November 01, 2021.

Residential Tenancy Branch Policy Guideline 2A states:

> 6-month occupancy requirement
> The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).
> […]
> E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE
> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:
> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

I accept the landlord's undisputed testimony that the rental unit was sold on August 23, 2021.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award tenant RB a monetary award in the amount of $18,000.00 ($1,500.00 monthly rent x 12 months).

Unpaid rent

Based on the Notice, I find that this tenancy ended on April 30, 2021, per section 44(1)(a)(v).

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenancy ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I am satisfied from the parties' testimony that the tenants overheld the tenancy.

Residential Tenancy Policy Guideline #3 states a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act. However, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

I accepted the uncontested testimony that the tenants moved out on May 04, 2021.

Thus, the landlord is entitled to receive rent from May 01 to 04, 2021 in the amount of $200.00 (four days times the *per diem* rate of $50.00).

Cleaning (labour and supplies)

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(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

Residential Tenancy Branch Policy Guideline 1 states:

> 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.

I find the tenant's testimony about the cleaning condition of the rental unit when the tenancy ended was vague. The May 07, 2021 photographs show a dirty kitchen and windows.

Based on the landlord's convincing and detailed testimony, the May 18, 2021 letter, the photographs and the receipts submitted by the landlord, 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 of $380.00 for cleaning and $44.36 for cleaning supplies.

I award the landlord compensation in the amount of $424.36 for cleaning expenses (labour and supplies).

Repair and painting (labour and supplies)

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 find the tenant's testimony about the hallway drywall damage was not convincing. The photographs submitted show drywall damage and dirty walls.

Based on the landlord's convincing and detailed testimony, the repair quotation and the photographs submitted into evidence, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by failing to repair the hallway drywall, the shelf above the kitchen sink and the doorframes.

I note the quotation mentions damaged baseboard. However, the landlord is not claiming labour and material for damaged baseboard.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 4 years old when the tenancy ended.

Considering the size of the rental unit and the age of the painting when the tenancy ended, the photographs, the repair material receipt and the landlord's testimony, I find it reasonable to award the landlord $500.00 for painting and repair expenses, including labour and supplies.

I note that the Policy Guideline is a guidance to interpret the Act. The tenant is responsible for the damage caused to the rental unit walls (hole in the hallway) despite the paint being at the end of its useful life.

As such, I award the landlord $500.00 for repair and painting expenses.

Filling fee

As the tenants were successful in both applications submitted, I find the tenants are entitled to recover the $100.00 filing fee for both applications. I award the tenants $200.00.

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

Set off

Tenant RB applied against JW on May 19, 2021. Tenant RB is entitled to $18,100.00. As RB applied against JW only, this monetary order is against landlord JW.

Tenant RB applied against JW and WW on May 28, 2021. Tenant RB is entitled to $1,600.00. As RB applied against JW and WW, this monetary order is against landlords JW and WW.

Landlord JW is entitled to:

Item	**Amount $**
Unpaid rent	200.00
Cleaning (labour and supplies)	424.36
Repair and painting (labour and supplies)	500.00
Filing fee	100.00
Total:	**1,224.36**

JW's monetary order is against tenant RB.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, I set off the landlord's award of $1,224.36 against the tenants' award of $18,100.00 (for tenants' application submitted on May 19, 2021).

In summary, I award tenant RB $16,875.64 (for tenants' application submitted on May 19, 2021). This award is against landlord JW.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant tenant RB $16,875.64 (for tenants' application submitted on May 19, 2021). This award is against landlord JW.

Pursuant to sections 38 and 72 of the Act, I grant tenant RB $1,600.00 (for tenants' application submitted on May 28, 2021). This monetary order is against landlords JW and WW.

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: November 30, 2021

Residential Tenancy Branch