



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on May 7, 2016 (the "Application").

The Landlord has applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order of possession for cause; a monetary order for damage to the rental unit; a monetary order for unpaid rent and utilities; an order permitting the Landlord to retain the security deposit in partial satisfaction; and an order granting the Landlord recovery of the filing fee.

The Landlord and the Tenant each attended the hearing on their own behalf. Both parties provided their solemn affirmation.

During the hearing, the Landlord and Tenant confirmed the Tenant vacated the rental unit at the end of April 2016, and that an order of possession is no longer required. This aspect of the Landlord's Application will not be addressed further in this Decision.

The Landlord advised the Tenant was served with the Notice of Dispute Resolution Hearing and supporting evidence by registered mail. The Tenant acknowledged receipt.

The Tenant did not submit any documentary evidence, and no issues were raised with respect to the Landlord's documentary evidence.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and make submissions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, utilities, or damage to the rental unit? If so, in what amount?
2. Is the Landlord entitled to retain all or part of the security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement, signed by the parties on November 29, 2015. It describes a fixed-term tenancy for the period January 1 to December 31, 2016. Rent in the amount of \$1,250.00 was due on the first day of each month. Electricity and heat were not included. A security deposit in the amount of \$675.00 was provided to the Landlord by the Tenant.

The Landlord testified that 1 Month Notice to End Tenancy for Cause was dated May 11, 2016, incorrectly. He says it should have been dated April 11, 2016. The Landlord stated the 1 Month Notice was served by leaving a copy attached to the door of the Tenant's rental unit on April 11, 2016, and included a proof of service form to that effect. The Tenant acknowledged receipt of the 1 Month Notice on that date.

The Landlord provided oral testimony in support of the monetary order sought. He advised the claim for BC Hydro is based on an estimate as the invoice was not available at the time the Application was filed. He has since learned that the actual amount owing by the Tenant is slightly greater than the estimate, but is seeking only \$71.50.

The Landlord also wishes to be compensated for cleaning expenses, referring to a term of the tenancy agreement which stipulates the rental unit "must be cleaned professionally by a recognized company." The Landlord provided with his documentary evidence a quote from a professional cleaning company for \$258.50. However, the Landlord advised that he and his spouse spent a couple of hours cleaning the rental unit themselves.

The Landlord wishes to be compensated for rent in the amount of \$1,250.00 for May 2016. He provided oral testimony that he tried a number of avenues to re-rent the unit after issuing the 1 Month Notice, including Craigslist, Kijiji and Facebook. He was unable to rent the unit until June 1, 2016.

The Landlord also wishes to be reimbursed \$50.00 which he says were his expenses for materials to repair nail holes in the wall of the rental unit. Again, the Landlord referred me to the tenancy agreement which states:

“No modifications to any fixed structures will be allowed within the suite. This may include, but not limited to, placing nails or screws in walls.”

The Tenant provided oral testimony in response to the Landlord’s claims. With respect to the Tenant’s portion of BC Hydro being claimed by the Landlord, the Tenant agreed at the end of the hearing she would pay something towards the BC Hydro expense.

The Tenant’s evidence with respect to cleaning costs was that the estimate is a “steep price” and is not accurate.

The Tenant advised she should not pay rent for May 2015 because she vacated the rental unit at the end of April 2016 to “keep the peace”.

The Tenant says the \$50.00 claimed by the Landlord for drywall repairs and paint is excessive. She stated the holes were very small, pin-like holes, and that the cost would not have been as much as has been claimed by the Landlord.

The Tenant also stated that she feels discriminated against by the Landlord on the basis of furniture she had in the rental unit, and because of the use of a business chequing account.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

The Landlord advised the Tenant was served with the 1 Month Notice as described above on April 11, 2016. The Tenant acknowledged receipt on that date. I find the 1 Month Notice was duly served on the Tenant on April 11, 2016. The effective date of the 1 Month Notice was May 31, 2016.

Section 67 of the *Act* empowers me to make an order granting compensation to a party. The Landlord claimed the Tenant's outstanding contribution to BC Hydro is \$71.50. Relying on the Landlord's oral testimony, and the Tenant's acknowledgment she owes the Landlord for this expense, I am satisfied the Tenant owes the Landlord \$71.50 for her share of BC Hydro for the period from March 16 to May 31, 2016.

With respect to the Landlord's claim for cleaning expenses, the Landlord's evidence was that he has not incurred any expense related to cleaning the rental unit. Rather, he and his spouse completed the work. Accordingly, I decline to make an award for cleaning the rental unit.

Section 26 of the *Act* requires tenants to pay rent when it is due under the tenancy agreement, unless there exists a right under the *Act* to deduct all or a portion of it. The Landlord's evidence indicates, and the Tenant confirms, that rent has not been paid for the month of May 2016. There is insufficient evidence before me that the Tenant had authority under the *Act* to reduce or refuse to pay rent.

Further, pursuant to section 7 of the *Act*, I find the Landlord took reasonable steps to minimize his losses by trying to re-rent the unit. However, he was unable to find a suitable tenant until June 1, 2016.

Accordingly, I find the Tenant owes the Landlord \$1,250.00 for rent for the month of May 2016.

The Landlord claims \$50.00 for materials purchased to repair damage to the walls. In the absence of any receipts to confirm the amount paid for materials, I find that a more appropriate award is \$25.00.

As the Landlord has been largely successful, he is entitled to recovery of the \$100.00 filing fee.

The Landlord wished to have the amount of the security deposit (\$675.00) deducted from the monetary order being sought.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of **\$771.50**, which has been calculated as follows:

BC Hydro:	\$71.50
Cleaning:	\$0.00
Rent (May 2016):	\$1,250.00
Filing fee:	\$100.00
Repair wall damage:	\$25.00
<i>LESS security deposit</i>	<i>(\$675.00)</i>
TOTAL:	\$771.50

Conclusion

I grant the Landlord a monetary order in the amount of \$771.50. This order may be filed in and enforced as an order of the Provincial Court (Small Claims).

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: June 13, 2016

Residential Tenancy Branch