



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB OPR MNDC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:49 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord withdrew her request for an Order of Possession for unpaid rent as the tenant has vacated the rental unit.

The landlord testified that she served the tenant with her Application for Dispute Resolution package ("ADR") including Notice of hearing by registered mail on May 10, 2016. The landlord submitted a copy of the Canada Post receipt and tracking information to support her testimony. Canada Post materials describe the package as "refused". The landlord submitted a copy of a note left by the tenant indicating that she could be sent mail to the rental unit and it would be forwarded to her. The landlord testified that the ADR sent on May 10, 2016 and evidence sent to the tenant was both returned indicating that it had been refused. Based on the undisputed sworn testimony of the landlord as well as the supporting materials submitted, I find that the tenant was deemed served with the landlord's ADR on May 15, 2016 (5 days after its registered mailing).

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on April 1, 2012. The rental amount of \$965.00 was payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement. The agreement provided that, as well as the rental amount the tenant paid \$50.00 each month in parking fees. The landlord testified that she continues to hold a \$437.50 security deposit paid by the tenant March 28, 2012. The landlord sought to retain that deposit towards the \$1455.00 monetary order sought against the tenant.

The landlord testified that, after the tenant failed to pay rent on May 1, 2016, she attempted to contact the tenant but received no response. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 3, 2016. The landlord testified that, when she still received no response to calls and text messages, the landlord called the police to enter the tenant's rental unit. The rental unit was empty, the keys were on the kitchen counter and a note dated April 2016 (with no day) and written by the tenant. The note from the tenant stated that, due to an emergency, she had to vacate quickly; she would ensure that the suite was cleaned; and that her security deposit can be mailed to the rental unit address and "it will be forwarded to someone who can get a touch with me".

The landlord submitted photographs to show that the unit required further cleaning after the tenant vacated the unit. Photographs of the kitchen appliances, including the refrigerator and stove showed that these appliances required cleaning. The rest of the photographs submitted by the landlord showed a relatively neat and tidy, recently cleaned unit. The landlord also referred to the photographs to show that the tenant had painted two walls light blue and the landlord claims the walls required repainting. The landlord sought \$140.00 for cleaning and \$200.00 for painting of the rental unit at the end of tenancy. The landlord submitted quotes from a construction company and a cleaning company as evidence of her costs. She provided sworn testimony that the work had now been completed in the unit and the receipts had been paid however those receipts had not been submitted for this hearing.

The landlord submitted a very brief condition inspection report: a 1 page document reflecting the state of the unit before and after the tenancy. The landlord testified that

the tenant was present at the move-in inspection but not at move-out as the tenant had vacated the rental unit without any notice. The report indicated;

- the stove, stove hood fan and refrigerator were dirty;
- some items had been left behind in the kitchen cupboards;
- some items were left in the bathroom cabinet;
- bathroom was clean;
- the drapes were not washed; and
- the living and bedroom walls were painted without permission.

The total amount sought by the landlord is as follows,

Item	Amount
Rent (May 2016)	\$965.00
Parking	50.00
Cleaning Unit	140.00
Painting 2 walls	200.00
Less Security Deposit	-\$437.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$967.50

Analysis

Residential Tenancy Policy Guideline No. 40 provides the standards to apply in assessing the useful life of elements of a residence. With respect to finishes, the guideline indicates that interior walls should be painted every four years. The landlord did not provide evidence to indicate whether the rental unit was painted prior to this 4 year tenancy nor did the landlord provide evidence to suggest that the unit was painted during the tenancy. I find that the photographs do not show evidence that the walls were damaged by the tenant. Further, I find that there is some evidence that the walls required painting at the end of this tenancy in any event. Finally, I note that the landlord submitted only a quote with respect to painting and did not provide a paid receipt to evidence her actual expenditure.

Similarly, with respect to the request for cleaning costs, I note that the landlord submitted only a quote with respect to cleaning and did not provide a paid receipt to evidence the cleaning expense. However, the landlord submitted photographic evidence and a copy of the move-out condition inspection report to indicate that *some* cleaning was required. Based on the testimony and documentary submissions of the landlord, I

find that the tenant did not meet the requirements of section 37 of the *Act* with respect to the kitchen appliances.

Section 37 of the *Act* provides that, on leaving the rental unit at the end of a tenancy,

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

As I have found that the tenant did not fully meet the requirements of the *Act* and that the unit required some cleaning at the end of the tenancy, and as I have found that the landlord did not provide a final paid receipt with respect to the cleaning, I find that the landlord is entitled to a nominal amount of \$60.00 for cleaning the kitchen appliances.

The landlord sought to recover the \$50.00 parking fee that the tenant was required to pay over the course of her tenancy. The provision of parking is included in the tenancy agreement, an agreement signed by the tenant. As the tenant failed to provide notice that she was vacating the rental unit and the landlord had a reasonable expectation of payment in May 2016 of \$50.00, I find the landlord is entitled to recover this amount.

The landlord sought to recover the rental loss for the month of May 2016. The landlord provided sworn undisputed testimony that the May 2016 rent was not paid by the tenant. The landlord testified that the tenant vacated the rental unit sometime in the first two weeks of May. The landlord testified that the tenant did not provide any notice that she would end the tenancy. The landlord testified that she was unable to re-rent the unit over the month of May 2016. The landlord testified that she discovered that the tenant had vacated the unit as of May 14, 2016. Based on the sworn, undisputed testimony of the landlord, I find that the landlord is entitled to recover May 2016 rent from the tenant in the amount of \$965.00.

The landlord filed her application to retain the security deposit within the required amount of time, given the circumstances submitted by the landlord. In accordance with section 72(2)(b) of the *Act*, the landlord is entitled to retain the security deposit towards the May 2016 rental amount. There is no interest payable for the period the landlord

retained the tenant's security deposit. The landlord is also entitled to the filing fee for this application, given their success.

Conclusion

The application for an Order of Possession is withdrawn.

I issue the landlord a monetary order as follows,

Item	Amount
Rent (May 2016)	\$965.00
Parking	50.00
Cleaning Unit	60.00
Less Security Deposit	-\$437.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$687.50

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 15, 2016

Residential Tenancy Branch