



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* for a Monetary Order for compensation, damages and unpaid rent, as well as the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and the Tenant were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding documents, as well as copies of the Landlord’s evidence. The Landlord confirmed receipt of the Tenant’s evidence, and although the Landlord claimed the evidence was received late, the Tenant submitted evidence showing it was sent to the Landlord in accordance with the Rules of Procedure. It was confirmed that the Landlord had time to review the evidence and the hearing would continue.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to give testimony, present their evidence and ask questions of the other party. 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

Is the Landlord entitled to a Monetary Order for compensation, damages and unpaid rent?

Is the Landlord entitled to retain the Tenant’s security deposit towards money owed?

Background and Evidence

The Landlord and Tenant were in agreement as to the details of the tenancy. The tenancy began on July 1, 2017 and was for a fixed term of one year, to end on June 30, 2018. On April 1, 2018, the Tenant provided notice that she was moving out and the move-out Condition Inspection Report was completed on April 26, 2018. Rent in the amount of \$1,500.00 was due on the first day of the month and a security deposit in the amount of \$750.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit and the Tenant did not provide permission for the Landlord to withhold any of the security deposit.

The Landlord submitted a Monetary Order Worksheet outlining their claims. They are claiming for the costs incurred from replacing a door lock in the amount of \$157.50, cleaning the rental unit in the amount of \$315.00 and unpaid rent for April and May 2018 in the amount of \$3,000.00.

The Landlord testified that on the date of the move-out Condition Inspection Report, April 26, 2018, they were not able to enter the rental unit as the lock to the front door had been removed. They submitted in evidence a photo of the door with the lock missing. The Landlord submitted an invoice for the replacement of the lock in an amount of \$157.50.

The Tenant testified that the rental unit had original hardware on the doors that often did not work. She was locked out of the home one day due to an issue with the front door lock and had to enter through the window. She testified that after this, she replaced the lock with a new one and notified the Landlord of this on February 22, 2018. The Tenant provided testimony that she removed the lock she had installed when she moved out. She tried to reinstall the original lock on the door, but was unable to, which is why there was no lock on the door on April 26, 2018. The Tenant submitted in evidence a photo of the same lock purchased by the Landlord with a price of \$25.96 and testified that she would be willing to pay this amount for the lock, not the \$157.50 claimed for by the Landlord.

The Landlord testified that the rental unit was dirty upon the Tenant moving out. This included stains on the carpet, a dirty oven, uncleaned fridge, and an uncleaned bathroom. The Landlord submitted an invoice for cleaning the rental unit in the amount of \$315.00, which they testified included professional carpet cleaning. The Landlord submitted photos of the unit taken on April 26, 2018.

The Tenant submitted the move-in Condition Inspection Report in evidence, dated June 28, 2017. The report notes a dirty oven and marks on the walls of many rooms. The Tenant submitted photos of the carpets that she testified were taken on June 28, 2017 showing stains in the same areas as the photos the Landlord submitted from April 26, 2018. The Tenant also submitted an email exchange between herself and the Landlord from when she moved into the rental unit where the Landlord confirmed there were carpet stains that were unable to be removed.

The Tenant testified that due to the condition of the rental unit upon moving in, she paid to have the unit professionally cleaned and the Landlord partially reimbursed her in an amount of \$250.00. An email exchange regarding the cleaning and reimbursement was submitted in evidence.

The Tenant also testified that she used a carpet cleaner on the carpets upon moving out and provided two witness statements regarding the carpets being cleaned, as well as cleaning throughout the rest of the unit. The Tenant and the two witnesses all stated that there were stains on the carpets that could not be removed by the carpet cleaner.

The Tenant testified that the Landlord entered the rental unit on April 23, 2018 and took photos before she had finished cleaning the unit. The Landlord testified that they did not enter until the move-out Condition Inspection Report was completed on April 26, 2018 in the presence of the Tenant's agent. The Landlord testified that the photos of the unit were taken on April 26, 2018.

The move-out Condition Inspection Report notes the carpets, stove, oven, fridge, bathroom and two bedrooms as "uncleaned". The report also notes that the key to the rental unit was not returned. The report was signed by an agent for the Landlord and an agent for the Tenant and noted that the amount to be deducted from the security deposit was to be determined. The Tenant testified that she did not agree with the information on the Condition Inspection Report and did not agree to have any amount deducted from her security deposit.

The Landlord is claiming compensation for unpaid rent for April and May 2018. The Tenant provided notice to end the tenancy on April 1, 2018 and returned possession of the rental unit to the Landlord on April 26, 2018. The Landlord testified that they did not find a new tenant until June 1, 2018 as they were completing some renovations and repairs in the rental unit in May 2018. The Landlord testified that the Tenant did not pay rent for April 2018, so they issued a 10 Day Notice to End Tenancy for Unpaid Rent on April 8, 2018. The 10 Day Notice was submitted in evidence.

The Tenant testified that she ended her fixed term tenancy due to the Landlord not complying with material terms of the tenancy agreement and the *Act*. The Tenant outlines the breach in her letter dated April 1, 2018 and states that on February 22, 2018, she requested several repairs in the rental unit to be completed by March 31, 2018.

The email dated February 22, 2018 was submitted in evidence by the Tenant. The email was addressed to the Landlord and asked for the following repairs to be completed by March 31, 2018:

- Paint – living room, dining room, hallway, master bedroom, 2nd bedroom, bathroom
- Fireplace pilot not lighting/gas not turned on
- Siding of kitchen cupboard deteriorating
- Doors fallen off on hall closets
- Washer needs servicing – very loud
- Paint – baseboards, trim and doors throughout
- Baseboards in bathroom rotten and moldy
- Toilet paper holder came off wall
- Replace doorknob in master bedroom

(Reproduced as written)

The Tenant testified that when the repairs were not completed, she sent an email to end her tenancy to the Landlord on April 1, 2018. In the email, she asked the Landlord to sign a mutual agreement to end the tenancy due to the Landlord's breach of the tenancy agreement and lack of response to the repairs requested. The Landlord did not sign a mutual agreement and the Tenant moved out in April 2018, with possession of the rental unit returned to the Landlord on April 26, 2018.

Analysis

The Landlord has applied for three monetary claims for compensation which will be outlined below.

Front Door Lock:

The Tenant testified that she notified the Landlord of the issue with the locks in her email dated February 22, 2018. However, in reviewing the email submitted in evidence, I do not find mention of the lock in question.

Section 31(3) of the *Residential Tenancy Act* (the *Act*) states that a tenant must not change a lock unless a landlord has agreed in writing or the tenant has been ordered to through dispute resolution. I find insufficient evidence to show that the Tenant notified the Landlord of the issue with the door lock or provided time for the Landlord to respond to the issue. I also find insufficient evidence to show that the Tenant received written permission to change the lock. As such, I find that the Tenant is responsible for the cost of replacing the lock for a fee of \$157.50, which includes the cost of purchasing the lock, as well as fees for labour and installation.

Cleaning Fees:

The Landlord has claimed \$315.00 for cleaning the rental unit after the Tenant moved out. An invoice for the cleaning, dated April 27, 2017 was submitted in evidence by the Landlord. The invoice does not include a breakdown of what was cleaned or the hours of cleaning completed. The Landlord was unable to break down the cleaning invoice during the hearing.

The Tenant submitted in evidence an email from the Landlord dated July 2, 2017, in which the Landlord states there are stains on the carpets that cannot be removed. As the Landlord testified that part of the \$315.00 cleaning fees involved professional cleaning of the carpets due to the stains, I find that the Tenant should not be responsible for stains that existed at the beginning of the tenancy or that were unable to be removed.

The move-in Condition Inspection Report noted the rental unit as dirty with some damage throughout the unit. The move-out Condition Inspection Report also notes areas of the rental unit as unclean. The Landlord submitted photos taken at the end of the tenancy that showed some areas that were left uncleaned. The parties were not in agreement as to when the photos submitted by the Landlord were taken. Due to the conflicting testimony, I find there is insufficient evidence to demonstrate the state of the rental unit at the end of the tenancy compared to the state of the unit when the tenancy commenced.

In an email dated April 26, 2018, the Tenant agreed that the freezer was not cleaned upon moving out, but disagrees that any other part of the rental unit was left uncleaned.

In accordance with rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the onus of proof is on the party who is making the claim. In this case, the onus is on the

Landlord to prove, on a balance of probabilities, that the Tenant is responsible for the cost of cleaning the rental unit at the end of the tenancy.

I do not find that the Tenant is responsible for the stains on the carpet, and I also find that the Landlord did not provide sufficient evidence to determine what part of the \$315.00 cleaning costs the Tenant is responsible for. As I am not able to determine how much of the cleaning invoice the Tenant may be responsible for, and am not satisfied that the rental unit was left uncleaned by the Tenant, I dismiss the Landlord's claim for compensation for cleaning.

Unpaid Rent:

The Landlord is claiming compensation of \$1,500.00 rent for April 2018 and \$1,500.00 for rent for May 2018. The Tenant provided testimony and evidence that she ended her fixed term tenancy due to the Landlord's breach of material terms of the tenancy agreement. The Tenant provided notice on April 1, 2018 that she would be ending her tenancy, although no date was provided for when she would be moving out. At that time, the Tenant had asked the Landlord to sign a mutual end to tenancy, which was not done.

Although it seems the Tenant moved out earlier in April 2018, possession of the rental unit was not returned to the Landlord until April 26, 2018 when the Condition Inspection Report was completed. As such, I find that the Tenant remained in the rental unit during April 2018, meaning that the Landlord was not able to rent the unit to a new Tenant during April 2018.

The Landlord testified that the Tenant owes rent for May 2018 due to a new tenant not moving into the rental unit until June 2018. The Landlord and Tenant agreed that this was a fixed term tenancy that was not to end until June 30, 2018. However, the Landlord testified that repairs and renovations were being completed in the rental unit during May 2018.

The invoice for cleaning submitted by the Landlord shows that the cleaning was completed on April 27, 2018 and the invoice for the lock repair shows the work completed on May 1, 2018. As the Landlord is not claiming further damage compensation from the Tenant, I determine that the repairs and renovations completed in May 2018 were not related to damage the Landlord is claiming against the Tenant.

Although the Tenant ended a fixed term tenancy early, the Landlord has a duty to mitigate their loss in accordance with Section 7(2) of the *Act*. I also find that the

Landlord was provided notice that the Tenant was vacating the unit, first from the warning email of February 22, 2018 and then on April 1, 2018 when notice was provided. Therefore, I find that the rent for May 2018 is not the responsibility of the Tenant, as a new tenant could have moved into the rental unit for May 1, 2018.

Based on the above, I find that the Tenant is responsible for \$1,500.00 in rent for April 2018, but not for rent for May 2018.

Both parties confirmed during the hearing that the Tenant's forwarding address was provided to the Landlord on April 22, 2018 and I find that the tenancy ended on the date of the move-out Condition Inspection Report on April 26, 2018. In accordance with Section 38(1) of the *Act*, a landlord has 15 days to either repay a security deposit or file a claim against it, from the later date of the end of tenancy or the date the forwarding address is provided in writing. As the end of tenancy date of April 26, 2018 is later, the Landlord had 15 days from that date to claim against the Tenant's security deposit. The Landlord applied for Dispute Resolution on April 30, 2018, within the 15 day timeframe allowable under the *Act*.

In accordance with the above, I find that the Landlord is entitled to withhold the security deposit in the amount of \$750.00, in partial satisfaction of the money owed.

As the Landlord was partially successful in their claim, I award them the recovery of the filing fee paid for this application, in the amount of \$100.00. A Monetary Order will be issued to the Landlord in the amount outlined below.

Monetary Order Calculations

April 2018 rent	\$1,500.00
Lock replacement costs	\$157.50
Recovery of filing fee	\$100.00
Less Security deposit	(\$750.00)
Total owing to Landlord	\$1,007.50

Conclusion

The Landlord is allowed to retain the security deposit in partial satisfaction of the total amount owed.

Following the deduction of the security deposit as per the above calculations, and pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** for

the balance due in the amount of **\$1,007.50** for rent owed for April 2018, compensation for the replacement of a lock and the recovery of the filing fee for this application.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: June 15, 2018

Residential Tenancy Branch