



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 16, 2018 (the “Application”). The Landlord sought compensation for damage caused by the Tenant to the rental unit and reimbursement for the filing fee. The Landlord sought to keep the security deposit.

T.L. attended the hearing as agent for the Landlord. T.L. is a property manager who works for a company that acts as agent for the Landlord. The Tenant did not attend the hearing. The hearing process was explained to T.L. who did not have questions when asked. T.L. provided affirmed testimony.

T.L. had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and evidence.

T.L. testified he sent the hearing package and evidence on April 23, 2018 by registered mail to a law firm representing the Tenant. T.L. provided the name of the law firm and the address he sent the package to both of which are included on the front page of this decision. T.L. said he sent the package to the law firm because the firm represented the Tenant in a previous dispute. He testified he called the law firm to settle the security deposit issue and the Articling Student provided the firm address and said it was the forwarding address for the Tenant. T.L. also said he sent the law firm an email asking for the Tenant’s forwarding address and the Articling Student replied on April 11, 2018 saying T.L. could send documents to the firm and that the Tenant can be reached through the firm’s address.

T.L. had submitted a Canada Post Customer Receipt as evidence. It is addressed to the Tenant and indicates the city of the law firm address. It includes a tracking number which is noted on the front page of this decision. With the permission of T.L., I looked

up the tracking number on the Canada Post website. The website shows the package was delivered and signed for April 25, 2018.

I accept the undisputed testimony of T.L. as outlined above and find the hearing package and evidence were served on the Tenant by registered mail to the Tenant's forwarding address in accordance with section 89(1)(d) of the *Residential Tenancy Act* (the "Act"). This is supported by the Canada Post Customer Receipt and information on the Canada Post website. Based on the information on the Canada Post website, I find the hearing package and evidence were received by the law firm April 25, 2018, in sufficient time for the Tenant to have prepared for, and appeared, at the hearing.

I proceeded with the hearing in the absence of the Tenant. T.L. was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of T.L. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to keep the security deposit as compensation for damage caused by the Tenant to the rental unit?

Background and Evidence

T.L. had submitted a written tenancy agreement. It was between the property management company and the Tenant regarding the rental unit. The tenancy started December 15, 2014. Rent was \$800.00 for December of 2014 and then \$1,600.00 monthly. A security deposit of \$800.00 was paid November 24, 2014.

The agreement included an addendum with a term about keys which states "Lessee will be given 2 set of keys...at No cost. If any of keys is not returned to lessor following termination of lease. Lessee shall be charge One hundred dollars (\$50.00) for each of keys missing". T.L. confirmed the Tenant initialed the page with this term on it. T.L. confirmed he reviewed the agreement with the Tenant and provided a copy to the Tenant. The addendum is signed by T.L. and the Tenant.

T.L. testified the Tenant moved out of the rental unit April 3, 2018. T.L. confirmed the Landlord still has the entire security deposit.

T.L. testified he received the Tenant's forwarding address in writing April 11, 2018 by email from the Articling Student at the law firm. T.L. confirmed he applied to keep the security deposit April 16, 2018.

In relation to a move-in inspection, T.L. testified as follows. T.L. and the Tenant did an inspection December 14, 2014. The unit was empty at the time. The Condition Inspection Report submitted is accurate in relation to the condition of the unit upon move-in. T.L. and the Tenant signed the report. T.L. gave the Tenant a copy of the report personally December 14, 2014.

In relation to a move-out inspection, T.L. testified as follows. T.L. and the Tenant did an inspection April 3, 2018. The unit was empty at the time. The Condition Inspection Report submitted is accurate in relation to the condition of the unit upon move-out. T.L. signed the report. The Tenant did not sign the report because he did not agree the unit was dirty. T.L. did not give a copy of the report to the Tenant.

T.L. submitted a Monetary Order Worksheet requesting the following compensation:

1	Strata by law fine – Tenant's uninsured vehicle	\$200.00
2	Towing estimate from Drake Towing – Tenant's vehicle	\$100.00
3	Carpet shampoo wash estimate – bedroom carpet	\$100.00
4	Two remote access for unit	\$200.00
5	Locksmith estimate lock drilling – two mailbox keys	\$130.00
6	Locksmith estimate – two unit keys	\$70.00
7	Monetary Order from previous arbitration	\$2299.99
	TOTAL	\$3099.99

In relation to the strata by law fine, T.L. testified as follows. The Tenant left his vehicle in the strata lot. The vehicle is uninsured. The strata issued a \$200.00 fine in April. The Tenant would have known the strata by laws because he was given them when he moved in. The Tenant signed a Form K.

In relation to the towing estimate, T.L. testified as follows. The Tenant has abandoned the vehicle and now the Landlord has to tow it. The Landlord has not yet towed the vehicle. The \$100.00 estimate is based on a phone conversation T.L. had with Drake Towing about the cost of towing the vehicle.

In relation to the carpet cleaning, T.L. testified as follows. The bedroom carpet requires cleaning. The carpet has not yet been cleaned. The \$100.00 estimate is based on an

online estimate obtained through google for downtown carpet cleaning for one or two bedrooms.

In relation to the two remote access devices for the unit, two mailbox keys and two unit keys, T.L. testified as follows. The Tenant refused to return the keys at the end of the tenancy. The keys have not been replaced. The \$200.00, \$130.00 and \$70.00 estimates are based on a phone conversation with a locksmith.

The Condition Inspection Report submitted shows the Tenant was given two rental unit deadbolt keys, two parking remote controls and two mailbox keys upon move-in. The report shows the Tenant returned two rental unit deadbolt keys, one parking remote control and two mailbox keys upon move-out. At first, T.L. said there was an arrow on the report saying the Tenant kept the keys. I told him there was no such comment on the report I received. T.L. then said he completed the portion of the report relating to keys prior to the move-out inspection and forgot to cross it out when the Tenant refused to return the keys.

T.L. submitted a copy of a Monetary Order dated March 21, 2018 in the sum of \$2,299.99 from a previous arbitration. The file numbers noted on the Monetary Order are on the front page of this decision. T.L. said the Landlord wants to keep the \$800.00 security deposit to off set the \$2,299.99 Monetary Order that is still outstanding. He said he served the Monetary Order on the Tenant with a demand letter. I asked T.L. why he had not enforced the Monetary Order in the Small Claims division of the Provincial Court and understood him to say he does not know how the Small Claims process works.

T.L. submitted photos of the rental unit upon move out. The photo of the bedroom carpet shows it is dirty. It looks like the carpet has not been vacuumed. There appears to be stains on the carpet.

Analysis

Based on the undisputed testimony of T.L., I find the following. T.L. and the Tenant did a move-in inspection and completed a Condition Inspection Report. T.L. gave the Tenant a copy of the report personally the same day it was completed. In the circumstances, the Landlord's right to claim against the security deposit has not been extinguished under section 24(2) of the *Act*.

Based on the undisputed testimony of T.L., I find T.L. and the Tenant did a move-out inspection and completed a Condition Inspection Report. Further, I find T.L. gave the Tenant a copy of the report in accordance with section 18 of the *Residential Tenancy Regulation* (the “*Regulations*”) which required the Landlord to serve the report in accordance with section 88 of the *Act* within 15 days of completing the inspection or receiving the Tenant’s forwarding address in writing, whichever is later. I accept the undisputed testimony of T.L. that he received the Tenant’s forwarding address, the address of the law firm, on April 11, 2018 via email from the Articling Student. I accept the undisputed testimony of T.L. that he sent the evidence for this hearing, which included the move-out Condition Inspection Report, to the law firm April 23, 2018 by registered mail. Therefore, I find T.L. did serve the report in accordance with section 88(d) of the *Act* within 15 days of receiving the Tenant’s forwarding address in writing. In the circumstances, the Landlord’s right to claim against the security deposit has not been extinguished under section 36(2) of the *Act*.

I also note the Landlord filed the Application April 16, 2018, within the 15 day time limit for making a claim against the security deposit set out in section 38(1) of the *Act*.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

In relation to the \$200.00 strata by law fine, I have no documentary evidence relating to the strata by laws or the fine. I am not satisfied the Landlord is entitled to compensation for the strata by law fine in the absence of documentary evidence and further details regarding the strata by law breached and what specifically the fine is for.

In relation to the towing estimate, I accept the undisputed testimony of T.L. regarding the abandoned vehicle and the need to tow it. I find the \$100.00 estimate for towing to be reasonable and find the Landlord is entitled to compensation in this amount.

In relation to the carpet cleaning, pursuant to section 37(2)(a) of the *Act*, the Tenant was required to leave the unit reasonably clean upon vacating. Based on the photos submitted, I find the Tenant failed to leave the bedroom carpet reasonably clean. I accept the undisputed testimony of T.L. that the bedroom carpet requires cleaning. I find the \$100.00 estimate for cleaning the carpet to be reasonable and find the Landlord is entitled to compensation in this amount.

In relation to the keys, the Tenant was required to return all keys received pursuant to section 37(2)(b) of the *Act*. The Condition Inspection Report indicates all keys issued to the Tenant were returned except one “parking remote control”. Section 21 of the *Regulations* states that a Condition Inspection Report “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 do not find the testimony of T.L. alone to amount to a “preponderance of evidence to the contrary”. Therefore, I must find based on the Condition Inspection Report that the only key not returned was one “parking remote control” which I understand to be the “remote access for unit” referred to in the Monetary Order Worksheet.

The Landlord has claimed \$100.00 for each remote access for the unit. I find the term in the tenancy agreement about keys to be unclear given it says the lessee will be charged “One hundred dollars (\$50.00) for each of keys missing”. I accept the undisputed testimony of T.L. that the estimate to replace the key is \$100.00 but find it appropriate to only compensate the Landlord for \$50.00 given the tenancy agreement.

Based on the undisputed testimony of T.L., I accept the Monetary Order dated March 21, 2018 remains outstanding. Pursuant to section 38(3) of the *Act*, the Landlord was entitled to retain the security deposit to off set this outstanding Order.

In summary, I find the Landlord is entitled to the following compensation:

2	Towing estimate from Drake Towing – Tenant’s vehicle	\$100.00
3	Carpet shampoo wash estimate – bedroom carpet	\$100.00

4	One remote access for unit	\$50.00
	TOTAL	\$250.00

The Landlord is authorized to use the \$800.00 security deposit towards the outstanding Monetary Order for \$2,299.99. If the Landlord seeks to enforce this Monetary Order in the future, the Landlord must account for the \$800.00 and only seek the remaining amount of \$1,499.99.

The Landlord is entitled to a further Monetary Order in the amount of \$250.00 for the above noted items.

Given the Landlord was successful in this application, I grant the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Application is granted in part. The Landlord is authorized to use the \$800.00 security deposit towards the outstanding Monetary Order for \$2,299.99.

The Landlord is entitled to a further Monetary Order in the amount of \$350.00 and I grant the Landlord this Order. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 28, 2018

Residential Tenancy Branch