



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Viewmount Suites
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 25, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- 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.

Agents of the Landlord (referred to as the "Landlord") and Tenant both attended the hearing. All parties provided testimony. The Tenant acknowledged receiving the Landlord's application and evidence. The Tenant stated he sent his evidence by registered mail to the address indicated on the Landlord's application (and provided proof of service) on May 9, 2018. Although the Landlord stated they did not receive this evidence, pursuant to section 88 and 90 of the Act, I deem this evidence served 5 days after it was mailed, which would be May 14, 2018.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 damage to the unit, for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Background and Evidence

Both parties agree that monthly rent was \$835.00 and was due on the first of the month. Both parties also agree that the Landlord holds a security deposit in the amount of \$365.00.

The Tenant stated that he sent, by regular mail, written notice that he was going to vacate the rental unit on April 24, 2017. The Tenant stated that he indicated in his notice that he wished to end the tenancy as of May 31, 2017, which is the date he stated he moved out of the rental unit.

The Landlord stated that she never got the Tenant's written notice, and on June 1, 2017, she received no rent, and started to wonder what was going on. The Landlord stated that on June 3, 2017, she issued a 10 Day Notice to End Tenancy for unpaid rent because she still hadn't received rent payment for June. The Landlord stated that she eventually went inside the rental unit on June 6, and saw that the Tenant had left, but had left a mess and some random furniture items. The Landlord stated that she was unsure if the Tenant had actually left, so she did not feel she could re-rent the unit right away.

The Landlord stated that she was unable to do a condition inspection report with the Tenant because he suddenly left without notice and wouldn't reply to her messages. The Landlord stated that she performed the condition inspection (move-out) by herself (after trying to reach the Tenant on his phone) on June 5, 2017. The Landlord stated that she took photos at this time. The Landlord also provided copies of the photos, some of which show a date of June 10, 2017, and some show July 10, 2017.

The Landlord stated that she performed and completed the move-out inspection on June 5, 2017, and sent a copy to her head office on that same day. The Landlord provided a copy of this condition inspection report into evidence which shows that she signed and dated the condition inspection report on July 1, 2017. The form also has a field which should have the date for the move-out inspection. However this field is blank.

The Tenant stated that he left the rental unit in perfect shape and it was exactly how it was when he arrived. The Tenant provided some photos into evidence which show portions of the rooms, and that it was cleaned appropriately. The Tenant stated that the Landlord took photos from another unit and is blaming him for things he didn't do because their relationship had gone downhill. The Tenant stated that he returned all of his keys to the Landlord's office on May 31, 2017, the same day he moved out. The Tenant stated that he only ever had two keys, which he returned.

On the Landlord's application, she indicated that she wants the following:

- 1) \$500.00 comprised of: garbage removal and cleaning in the amount of \$250.00 and suite damage repairs in the amount of \$250.00.
- 2) \$110.00 for replacement of the keys because the Tenant never returned them.
- 3) \$835.00 for June rent because the Tenant left without proper Notice.
- 4) **Total indicated on application: \$1,445.00**

At the hearing, the Landlord stated that she is looking for \$100.00 for junk removal, and \$250.00 for painting of the rental unit. The Landlord stated that the Tenant left junk that needed to be removed and left the unit dirty and in need of repainting. The Landlord stated that she paid around \$1,000.00 for painting of the rental unit and is looking for \$250.00 of this back from the Tenant because the unit was dirty.

The Landlord provided a painting invoice which shows it cost \$1,600.00 to repaint the suite. This amount is circled and highlighted. The Landlord also provided an invoice showing that it cost \$200.00 for "demolition and furniture removal". This amount is circled and highlighted. The Landlord provided another invoice showing more disposal fees for waste, general garbage, tires, mattresses, and electronics. On this invoice it also indicates another rental unit, and appears to split the total of all items on the bill in half, leaving \$234.16 for the Tenant to pay. A further breakdown was not provided.

The Landlord stated that she is also looking for \$110.00 for the cost to rekey the locks and replace the keys because she never got them back from the Tenant. The Tenant stated he did return them on May 31, 2017, by leaving them in the mailbox at the apartment office. No receipt was provided for the cost to replace the keys.

The Landlord did not provide a monetary order worksheet.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (move in inspection, photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the *Act* states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I find the Landlord has provided internally inconsistent information and evidence with respect to the condition inspection report. The Landlord stated that she did the move-out inspection on June 5, 2017, and sent the condition inspection report to head office on that same day or shortly after. However, on the condition inspection report, I note the Landlord did not sign and date this document until July 1, 2017. This inconsistency leads me to question the reliability of this document. As such, I have given it no weight.

With respect to item #1 listed above, I note the Landlord was looking for \$500.00 comprised of garbage removal and cleaning (\$250.00) and suite damage repairs (\$250.00). These amounts were listed on her application form. However, at the hearing, she indicated she wanted different amounts. She stated she wanted \$100.00 for junk

removal, yet she provided invoices showing two different amounts for garbage and junk removal, some of which appear to be related to another rental unit. Ultimately, I find it unclear what amounts were attributed to the Tenant and which were the other unit. Further, there is no explanation regarding where the Landlord's value of \$100.00 came from, as there are two other invoices, which were poorly explained. There is an invoice for \$200.00 for some disposal, then another one for \$234.16. Despite asking for further clarity in the hearing on item #1, I find the Landlord's amounts and invoices confusing and not sufficiently clear. I find the Landlord has not sufficiently supported and clarified her application on this point. I dismiss the Landlord's request on item #1.

With respect to item #2, I note the parties disagree with respect to whether or not the keys were returned. I find the move-out condition inspection of no value, as it has been given no weight, and I only have contrasting oral testimony on this matter. Without further evidence on this matter, I do not find the Landlord has sufficiently demonstrated that the Tenant is responsible for this amount and I decline to award compensation for this item.

With respect to item #3, I note the Tenant says he gave written notice to the Landlord by regular mail. However, the Tenant was unable to provide further proof that he sufficiently served the Landlord with this notice. I find the Tenant did not give proper notice and when the Tenant vacated the rental unit, he did so without sufficiently notifying the Landlord (giving at least one month Notice in writing). I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord. As such, I find the Tenant is responsible for rent for the month of June 2017, as it took the Landlord a portion of the month to determine if the Tenant had left and to prepare the suite for the next rental. I award the Landlord compensation equivalent to June rent (\$835.00).

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim

Amount

Total of items listed above	\$835.00
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$365.00)
TOTAL:	\$570.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$570.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: July 26, 2018

Residential Tenancy Branch