



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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on April 19, 2018. The tenant confirmed receipt of the dispute resolution package but did not know on what date. I find that the tenant was deemed served with this package on April 24, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2016 and ended on April 2, 2018. Monthly rent in the amount of \$1,458.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant to the landlord. A move in condition inspection and inspection report were conducted by both parties on July 29, 2016.

Both parties agreed that the tenant was originally supposed to move out on March 31, 2018; however, the tenant did not completely vacate the subject rental property until April 2, 2018.

The landlord submitted into evidence text messages from March 31, 2018 to April 2, 2018 between the landlord and the tenant. The text messages state that the tenant's movers did not show up on March 31, 2018 as they were supposed to, and the tenant was not able to find other movers until April 2, 2018. The landlord allowed the tenant to stay until new movers could be arranged. On March 31, 2018 the landlord asked the tenant when she would like to do the move out inspection and the tenant responded that she would keep him posted depending on when she could find new movers. The next text from the tenant to the landlord was on April 2, 2018 and it stated that the tenant had moved out and that she was at the airport. The April 2, 2018 text message went on to state that the tenant did not have time to clean property and would not be available to complete the move out condition inspection. The tenant testified that she moved to another province on April 2, 2018.

Both parties agreed that the tenant provided her forwarding address to the landlord via e-mail on April 10, 2018 and provided the landlord with an updated forwarding address via registered mail in July of 2018. The landlord testified that he returned \$800.00 of the tenant's deposits via registered mail on April 10, 2018. The tenant testified that she received the \$800.00 deposit around that time. The landlord filed for dispute resolution and to retain a portion of the tenant's deposits on April 13, 2018.

In the landlord's original application, he claimed \$600.00 of damage for: cleaning costs, damage to moldings, damage to blind pulls, and pet urine stains on the floor. At the hearing the landlord testified that he is only seeking to recover the following:

Item	Amount
Cleaning fee	\$293.92
Registered mail	\$12.55
Registered mail	\$11.60

The landlord entered into evidence photographs of the subject rental property showing a dirty stove, refrigerator, dishwasher, cupboards, oven, and large amounts of dog hair throughout the subject rental property. In support of the cleaning charge, the landlord entered into evidence a detailed cleaning receipt which sets out all the cleaning completed by the cleaning company in eight hours.

The tenant testified that while she did not have time to clean the floor and some other areas in the subject rental property, she believed the cleaning charge to be excessive. The tenant testified that some of the dirt was left over from the previous tenant and that due to her short stature, she was not able to reach all the areas that needed to be cleaned.

The landlord testified that in the course of preparing for today's hearing he sent the tenant two packages via registered mail, one in the amount of \$12.55 and the other in the amount of \$11.60. Receipts were not entered into evidence.

Analysis

I find that while e-mail does not comply with the service requirements set out in section 88 of the *Act*, the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address on April 10, 2018 because the landlord acknowledged receipt of the tenant's forwarding address on that date.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Monetary Claim for Insurance Deductible

Section 67 of the *Act* states that if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and both parties' testimony, I find that the rental unit required significant cleaning after the tenant moved out. The landlord submitted into evidence a cleaning receipt totaling \$293.92. I find that cleaning charge is reasonable in the circumstances and that the tenant is responsible for this cleaning fee.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for the registered mail charges he incurred when preparing for, or participating in, this proceeding.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

I find that the landlord is entitled to retain the following amount from the tenant's deposits:

Item	Amount
Cleaning fee	\$293.92
Filing fee	\$100.00
TOTAL	\$393.92

Conclusion

I find that the landlord is entitled to retain \$393.92 of the tenant's deposits.

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Total of deposits retained	\$600.00
Less cleaning fee	-\$293.92
Less filing fee	-\$100.00
TOTAL	\$206.08

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: October 24, 2018

Residential Tenancy Branch