



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for a monetary order for repairs, cleaning and or other damages in the total amount of \$1,742.65; the Landlord requests that it be allowed to retain the security deposit in partial satisfaction of its claim. The Landlord also requests an order for payment of the filing fee.

The Landlord’s agent and Tenant both appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing; however, the Tenant states that he moved recently and did not receive the Landlord’s evidence package which the Landlord delivered by registered mail on September 4, 2018. The Tenant was aware that there was a pending hearing and failed to inform the Landlord of his relocation to a new address. He was unaware that an evidence package had been delivered to his previous address.

Under section 90 of the Act, the evidence package can be deemed to have been served 5 days after the date it was posted, or on September 9, 2018. The evidence package filed by the Landlord contains information that is dated and was available to him to serve months ago. Upon reconsideration of the Tenant’s comments, I note that rule 3.14 of the Residential Tenancy Branch states that evidence must be received by the respondent not less than 14 days before the hearing. I find that there is no justified reason why the Landlord waited seven months to serve the evidence package on the Tenant and that this was an unreasonable delay as per rule 3.11 of the Rules of Procedure, and this did not afford the Tenant any opportunity to review or consider the evidence contained therein. As the evidence can only be deemed served as of September 9th, I find that the Landlord has not complied with rule 3.14 regarding service of evidence on the Tenant.

For these reasons, I am disallowing the documentary evidence that was submitted by the Landlord as it is prejudicial to the Tenant, with the exception of the tenancy agreement and move-in inspection report signed by both parties. However, I did consider the verbal testimony of the Landlord as he described his documentary evidence and the Tenant was given an opportunity to respond to that verbal testimony.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

The issue of when the Tenant provided written notice of his forwarding address is in dispute and the parties were granted an additional day to submit any record of that communication for my consideration. The Tenant submitted the record of the communication for my consideration.

Although all testimony was taken into consideration at the hearing, only the evidence which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation for repairs, cleaning and other damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began December 15, 2015 and ended on December 31, 2017; it was a fixed term tenancy agreement with monthly rent of \$1,850.00 payable on the first of each month. A security deposit of \$925.00 was paid to the Landlord.

The Tenant submitted screenshots of text messages between the parties dated January 16, 2018, which the Landlord states *"Hi Scott. I'll acknowledge receipt of your forwarding address via text message yesterday. Let me know asap if you wish to discuss the return of a portion of the security deposit otherwise it's going to cost you time and money."* The parties agree that the Tenant did not consent to the Landlord retaining any part of the security deposit, although attempts were made to settle on an amount.

The Landlord filed this Application on February 2, 2018 and claims the following:

- Late fees for six instances of late rent, at a rate of \$25.00 per incident (\$150.00)
- Repair to a broken stove glass (\$278.88)
- Cost to re-key the rental unit (\$163.77)
- Storage fees (\$100.00)
- Garbage removal (\$100)

- Tree branch removal (\$200)
- Repainting due to moldy walls (\$300)
- Wine stain (\$50)
- Rewiring of appliance (\$300)
- Filing fee (\$100.00)

The Landlord states the signed tenancy agreement indicates in the addendum in paragraph 13 that the parties agreed to a \$25.00 late fee for late rent payments. The Landlord described a schedule prepared by his office that indicates when rent was paid and the dates it was late, namely, August 5, 2016, April 3, 2017, May 3, 2017, July 4, 2017, October 3, 2017 and December 6, 2017. The Tenant does not dispute the late payments, but argues that the issue was never raised during the tenancy and only after he moved out.

The stove glass was broken and the Tenant agreed to pay \$100.00 for the replacement glass, but the Landlord estimated the repair at \$300.00 which would include time and labour. When the stove was taken in for repair, the cost of doing the work was almost the same as purchasing a refurbished stove, which he did for \$278.88. He estimates the original stove to have been between 10 and 14 years old.

When a co-tenant moved out, the Tenant got permission to bring in roommates; when he did this, he states he changed out the bedroom door locks and garage door lock. He left the original knobs behind and claims he provided all keys to the Landlord upon moving out. The Landlord states that several roommates were coming and going, and many keys changed out. At the end of the tenancy, the Landlord states he received some sets of keys back, but not for the basement slider. He states the condition inspection report shows that all keys were given to the Tenant at the start, but he claims not all were returned. For these reasons, he had locks re-keyed at a cost of \$163.77.

The Landlord claims that the Tenant left behind equipment in the garage and other items, and he is claiming \$100.00 for storage fees. The Tenant states that he was not allowed access to retrieve his belongings and had to bring an application to the Residential Tenancy Branch which was heard on February 26, 2018 and the parties agreed to settle the issue by allowing the Tenant access to remove his belongings on March 3, 2018. The Tenant states he took everything at that time and that the dispute application was necessary to gain access. He argues he is not liable for storage fees.

The Landlord also claimed \$100.00 to remove garbage and \$200.00 to remove tree branches he says the Tenant left on the ground. The Tenant claims he left nothing behind and there should be no garbage removal fee charged to him.

The Landlord claims \$300.00 to paint the walls in one bedroom. During inspections, he was told not to enter the bedroom; at the end of the tenancy, he discovered that the room was kept cold and mold had penetrated the walls. He needed to paint the walls before re-renting, at a cost of \$300.00.

The Landlord is claiming \$50.00 for a wine stain which the Tenant states he knows nothing about. The Landlord states this was pointed out during the move-out inspection and acknowledged by the Tenant.

The Landlord claims that a dryer needed re-wiring due to the Tenant moving it. The Tenant states that he moved it down to the laundry room but did not touch the wiring. The Landlord is claiming \$300.00 to re-wire the appliance to be used at the outlet.

The total claim is for \$1,742.65 plus the \$100.00 filing fee. The Landlord asks to retain the security deposit in satisfaction of these claims.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

I am satisfied that the Landlord and Tenant agreed in writing to a \$25.00 late fee and that the Landlord has proven 6 late rent payments. Accordingly, I am awarding the Landlord **\$150.00** for late filing fees.

Under section 37 of the Act, a tenant must leave a rental unit clean and undamaged except for reasonable wear and tear, and return all keys that are in the possession or control of the tenant.

The Tenant admits to the glass being broken in the stove, but claims that the appliance had been well cleaned at the end of the tenancy. I accept that the cost of the glass was \$100.00, but that there would have been additional charges for time and labour to do that repair. I find that the Landlord mitigated his losses by replacing the unit with a refurbished stove and I award the Landlord the sum of **\$278.88** for this expense.

The Tenant clearly had many other people living in the rental unit and locks were changed by him during the tenancy. Not all of the keys were returned as required under the agreement. Accordingly, I find that it is reasonable for the Landlord to change out the locks at the end of this tenancy and I award the cost of **\$163.77**.

I am satisfied that the Tenant intended to retrieve his belongings shortly after the end of the tenancy and that he was prevented from doing so, making it necessary to apply to the Residential Tenancy Branch for a hearing. Accordingly, I am not inclined to award the \$100.00 storage fee requested by the Landlord due to his failure to mitigate this loss by refusing access.

The Landlord requested permission to submit additional evidence to show the garbage he claims was left behind, which the Tenant denies. I find that the Landlord had seven months to file his evidence to prove his case and denied him the opportunity to file this additional evidence. The Tenant was prevented access at the end of the tenancy which would have allowed him opportunity to clear out any remaining items, which could have saved the Landlord the cost and trouble of removing garbage. Accordingly, I am not awarding the garbage removal fee due to lack of sufficient evidence and the Landlord's failure to mitigate.

There was little evidence regarding the accusation that the Tenant cut away trees and left branches that required hauling away. However, the addendum to the tenancy agreement does state that yard maintenance and maintaining the exterior grounds was the responsibility of the Tenant. There is no evidence before me as to the actual cost for this work; accordingly, I am awarding the Landlord the sum of **\$100.00** which would cover four hours of labour at \$25.00 an hour for this expense, which I deem to be reasonable.

I am satisfied that the Landlord incurred a cost of **\$300.00** to paint a bedroom, which was required due to the presence of mold. The Tenant may not have been directly responsible for that damage, but he did invite roommates into the rental unit to use the bedroom and is therefore legally liable for any damage done.

I am satisfied that the Landlord pointed out the wine stain and noted it during the move-out inspection. I am awarding **\$50.00** for the removal of that stain at the end of the tenancy.

The claim for the electrical wiring is disallowed. There is no evidence that the Tenant could have been responsible for that damage and in the move-in inspection report, it notes that “garage laundry electric hazard to be corrected” under the section for repairs to be completed at the start of the tenancy. I am not satisfied that the Tenant is liable for this electrical repair.

I now turn my attention to the matter of the security deposit.

The Act contains comprehensive provisions on dealing with a tenant’s security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

While electronic messaging is not a recognized form of serving documents under the Act, I accept the Tenant’s oral testimony and email correspondence that the Landlord was put on written notice of the Tenant’s forwarding address on January 15, 2018 via text message. This is because the Landlord replied to that email the following day and acknowledged receipt of the Tenant’s forwarding address received the previous day in a text.

Therefore, the Landlord would have had 15 days from January 15, 2018 onwards, to deal properly with the Tenant’s security deposit pursuant to the Act. There is no evidence before me that the Landlord obtained written consent from the Tenant to withhold it. The Landlord filed the application to retain the security deposit on February 2, 2018, more than 15 days past the date of receiving the forwarding address. Therefore, I must find the Landlord failed to comply with sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of **\$1,850.00**. However, under section 72 of the Act, the security deposit owing may be used to offset any monetary award payable to the Landlord.

The final monetary award is calculated as follows:

Item	Amount
Late fees	\$150.00
Stove damage	\$278.88

Lock replacement	\$163.77
Yard maintenance	\$100.00
Painting	\$300.00
Wine Stain	\$50.00
Less: security deposit credit	(\$1,850.00)
Balance Owning to Tenant	\$807.35

Although the Landlord was partially successful, the monetary award was in favour of the Tenant and therefore I do not award the filing fee to the Landlord.

Based on the above, I grant the Tenant an order to direct the Landlord to pay the Tenant the sum of \$807.35 forthwith. This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay the sum of \$807.35 forthwith to the Tenant.

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: September 28, 2018

Residential Tenancy Branch