



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL-S, FFL

Introduction

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

The Landlord was present for the duration of the teleconference hearing, while no one called in for the Tenant during the approximately 42-minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with the Landlord’s evidence package was sent to the Tenant by registered mail. The mail was returned to the Landlord as unclaimed and a photo of the returned package was submitted into evidence. The Landlord testified that the address the package was sent to was confirmed by the Tenant as her forwarding address.

The Landlord submitted a note signed by the Tenant on February 1, 2018 that included a copy of the Tenant’s identification with this address on it. A note under the identification stated that the deposit could be sent to that address. As such, I find that the Tenant was duly served in accordance with Section 88 and 89 of the *Act*. Failure to claim mail is not a ground for review under the *Act*.

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.

Preliminary Matters

The Landlord submitted evidence through the online system prior to the hearing. All of the evidence was able to be accessed, other than a spreadsheet that included a detailed list of the monetary claims being sought, which was unable to be opened. The Landlord was provided permission to re-submit this document to the Residential Tenancy Branch in a different format following the hearing. The information was submitted as requested and therefore included in evidence for this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages and/or compensation?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on September 1, 2017 and was for a fixed term of one year, set to end on August 31, 2018. Monthly rent was \$1,600.00 plus utilities, and a security deposit of \$800.00 was paid at the outset of the tenancy. The Tenant moved out on February 1, 2018.

The Landlord provided testimony that when rent for January 2018 was not paid, she reminded the Tenant that the rent was overdue and that February rent was due as well. It was at this time, on February 1, 2018 that the Tenant provided notice that she would be vacating the rental unit immediately. The Landlord went over to the rental unit to have the Tenant sign a note stating that she was moving out. The Landlord submitted into evidence a note signed by the Tenant on February 1, 2018 stating that the tenancy was ending on the same day.

The Landlord testified that the Tenant advised her that she would come back to the unit to get the rest of her belongings and to do the move-out inspection. However, later, the Tenant advised her that she would not be able to move all of her belongings and told the Landlord to get rid of anything still in the rental unit. An online advertisement for the unit was posted on February 1, 2018 to try to find a new tenant immediately.

The Landlord testified that she provided three times to complete the move-out inspection, but did not hear back from the Tenant. As such, the Landlord completed the move-out Condition Inspection Report on her own on February 7, 2018. The Condition Inspection Report was submitted into evidence. The Landlord stated that the keys to the rental unit were never returned to her.

The Landlord was able to re-rent the unit for March 2018 and submitted the new tenancy agreement into evidence. She has claimed \$1,575.00 in unpaid rent for February 2018. The Landlord provided testimony that the Tenant was short \$750.00 rent in January 2018 and provided permission in writing for the Landlord to withhold the \$800.00 security deposit towards rent owing.

As such, the Landlord received an overpayment of \$25.00 which she is applying to rent for February 2018. The Landlord stated that in addition to the unpaid rent, a \$25.00 late fee applies. The \$25.00 late fee is noted in the tenancy agreement which was submitted into evidence.

The Landlord is also claiming \$40.53 in BC Hydro utility payments. She stated that the Tenant cancelled BC Hydro on February 1, 2018 and therefore the Landlord paid the bill for the period of February 2, 2018 until March 1, 2018 when the new tenant took over. The BC Hydro bill, dated March 5, 2018 was submitted into evidence. The tenancy agreement states that the Tenant is responsible for the BC Hydro bill during the tenancy.

The Landlord is claiming \$800.00 in a liquidated damages fee as stated in the tenancy agreement. The tenancy agreement states the following: 'If the Tenant moves out prior to the natural expiration of this Lease, a re-rent levy of \$800.00 will be charged to the Tenant.'

The Landlord has claimed \$94.50 in cleaning fees. The Landlord submitted an invoice for three hours of professional cleaning at \$30.00 per hour, plus tax. Photos of the condition of the rental unit at the end of the tenancy were submitted into evidence, along with photos of the items left behind.

The Landlord testified that along with the professional cleaning, she spent 3.5 hours itemizing the items left behind, as well as cleaning up items such as mouldy food and garbage left in the rental unit. The Landlord is estimating \$15.00 per hour for two

people, with approximately 3.5 hours of work for a total of \$114.24. This amount includes cleaning supplies such as garbage bags and gloves, at a cost of \$9.24. A receipt in the amount of \$9.24 was submitted into evidence.

The Landlord is claiming \$14.39 in registered mail costs to send the Notice of Dispute Resolution to the Tenant, as well as \$12.55 in registered mail costs to send the Tenant the amendment to the Application for Dispute Resolution.

The Landlord testified that since the Tenant did not return the keys to the rental unit, she had to re-key the unit at a total cost of \$32.47 for the new front door lock and key replacement. The Landlord submitted a receipt for the cost of the supplies in the amount of \$23.51 and from a key-cutting company in the amount of \$8.96.

The Landlord stated that along with the keys, the fobs to the rental building were not returned by the Tenant and the Landlord therefore needed to purchase new ones from the strata. The Landlord has claimed \$120.00 for the purchase of two fobs, as a \$60.00 per fob replacement fee is noted in the tenancy agreement. A receipt in the amount of \$100.00 for the actual cost of replacing the fobs, dated March 5, 2018, was submitted into evidence, at a cost of \$50.00 per fob.

The Landlord testified that a move-out fee of \$100.00 is charged from the strata corporation of the rental building. As such, she has asked to be reimbursed for this fee from the Tenant. A copy of the strata by-laws was submitted into evidence.

The Landlord provided testimony that at the time the Tenant moved out, the closet door was not on the hinges and was resting on the wall. A photo of the closet door was submitted into evidence. The Landlord purchased the items needed to repair the closet door in the amount of \$4.13 and submitted the receipt from a hardware store dated July 2, 2018 in the amount of \$4.13.

The Landlord also stated that the fridge door was broken and the hinge required to fix the fridge was no longer available. As such, the Landlord submitted an estimate of \$207.76 into evidence for an equivalent fridge door to replace the current one. The Landlord submitted that the fridge was new in February 2016 and stated that the door has not yet been fixed which is why an estimate was provided.

The Landlord stated that the bedroom window handle was damaged during the tenancy. She submitted a photo of the part required to repair the window at a cost of \$17.99 and stated that the repairs have not yet been completed.

The Landlord is claiming \$1,372.15 for the replacement of a mattress that was provided during the tenancy. The tenancy agreement outlines the furniture provided during the tenancy, including a mattress. The Landlord stated that at the end of the tenancy, the mattress was significantly stained and needed to be replaced. The Landlord testified that she attempted to clean the mattress and also had it professionally cleaned, both of which were unsuccessful.

The Landlord stated that the mattress was new in 2016 and that the mattress she purchased to replace the original was the exact same one as the original. A receipt, dated February 7, 2018, was submitted into evidence and stated a purchase price of \$1,372.15, including delivery and removal of the original mattress.

The Landlord has claimed \$5.03 for replacing burnt out light bulbs, as well as purchasing super glue and envelopes. A receipt, dated February 10, 2018, was submitted into evidence.

Lastly, the Landlord has claimed \$163.80 for fixing the bathtub spout and repairing the garburator in the rental unit. The Landlord submitted that the new tenant in the rental unit notified her that the garburator was not working and that the bathtub spout was not diverting water from the bathtub to the shower head. The Landlord hired a plumber to fix both of these issues. An invoice from a plumbing company, dated March 8, 2018, was submitted into evidence.

The total amount the Landlord has claimed is \$4,801.70, including the \$100.00 filing fee paid for the Application for Dispute Resolution.

Analysis

Based on the undisputed testimony and evidence of the Landlord, I find as follows for each of the monetary claims:

Unpaid rent: As this was a fixed term tenancy, I refer to Section 45(2) of the Act which states that a tenant must provide at least one month to end the tenancy no earlier than the date stated in the tenancy agreement as the end of the fixed term. As such, I find

that the Tenant's notice on February 1, 2018 to end the tenancy on the same day was not in compliance with ending a fixed term tenancy under the *Act*.

I also note that a landlord has a duty to minimize their losses in accordance with Section 7(2) of the *Act*. By advertising the unit for re-rental right away and securing a new tenant for March 1, 2018, I find that the Landlord took reasonable steps to minimize their loss.

I find that the Landlord still experienced a loss of one month of rental income for February 2018 and I determine that the Tenant must compensate her for this loss. I accept the Landlord's testimony and evidence that an overpayment of \$25.00 occurred during the tenancy and therefore award \$1,575.00 for February 2018 rent.

Late payment fee: The Landlord has also claimed a \$25.00 late fee for February 2018 rent as noted in the tenancy agreement. I refer to Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") which allows for a late payment fee of up to \$25.00, provided that the fee is noted in the tenancy agreement, in accordance with Section 7(2) of the *Regulation*.

Although the tenancy agreement submitted into evidence provides for a \$25.00 per day late fee, I find that the Landlord is entitled to a one-time late fee of \$25.00 in accordance with the *Regulation*.

Unpaid utilities: The tenancy agreement states that the Tenant is responsible for paying the BC Hydro bill during the tenancy. As the Tenant did not provide proper notice to end the tenancy, I find that the Landlord is entitled to compensation for the BC Hydro bill in the amount of \$40.53 for the period of February 2 to March 1, 2018, the time when the Tenant would have remained residing in the rental unit had proper notice been provided.

Liquidated damages: The Landlord has claimed \$800.00 for a liquidated damages fee as noted in the tenancy agreement as the following: 'If the Tenant moves out prior to the natural expiration of this Lease, a re-rent levy of \$800.00 will be charged to the Tenant.'

I refer to *Residential Tenancy Policy Guideline 4: Liquidated Damages* which states that a liquidated damages fee must be a pre-estimate of the loss that would occur from the tenancy agreement being broken, and must not be a penalty or be an extravagant amount.

Based on the statement in the signed tenancy agreement, I find that the fee was explained as a re-rental fee and not as a penalty. I also find that based on the statement in the tenancy agreement, the Tenant was aware that \$800.00 would be charged should the fixed term tenancy agreement be broken and this amount was agreed upon by the signature of both parties on the tenancy agreement. As such, I award the Landlord \$800.00 for liquidated damages.

Cleaning: The Landlord has claimed \$94.50 for the cost of hiring a professional cleaner, as well as \$114.24 for cleaning, organizing, and cleaning supplies. I accept the photos of the rental unit submitted into evidence by the Landlord that demonstrated how many belongings and various items were left behind, as well as the Landlord's testimony regarding how quickly the Tenant moved out.

Therefore, I find that some cleaning was likely needed and find the amount requested by the Landlord to be reasonable. I award the Landlord compensation for the total amount claimed for cleaning and supplies in the amount of \$208.74.

Registered mail: As registered mail costs for the Dispute Resolution process are not compensable costs under the *Act*, I decline to award the Landlord any amount for compensation for registered mail. Instead, they are a cost that may be incurred by both parties through a Dispute Resolution Proceeding.

Re-keying: I accept the testimony of the Landlord that the Tenant did not return the keys to the rental unit after moving out and therefore the Landlord needed to re-key. I also accept the receipts submitted into evidence and award the Landlord \$32.47 as compensation for re-keying the front door and replacing the keys.

Fobs: As the fobs to the rental property were also not returned when the Tenant vacated the rental unit, I find that the Landlord is entitled to the recovery of the amount to purchase new ones. Therefore, I award the Landlord \$100.00, which represents the actual cost for replacement in the amount of \$50.00 per fob.

Move-out fee: I accept the testimony and evidence from the Landlord that the strata corporation charges a move-in and move-out fee of \$100.00. I also accept the Landlord's testimony that the Tenant did not pay this fee and therefore I find that the Landlord should be compensated in the amount of \$100.00.

Closet door: As the issue with the closet door hinge was mentioned on the Condition Inspection Report at move-out and no issues were noted at move-in, I find that the Tenant is responsible for the cost of repairing the door that was likely damaged during the tenancy. As such, I award the Landlord the cost of the supplies to fix the door in the amount of \$4.13, as stated on the receipt.

Refrigerator: The Landlord has claimed \$207.76 for replacement of the fridge door. However, as the Landlord is basing this amount on a quote and testified that the work has not yet been done, I find that she has not established the value of her loss.

I refer to the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test to determine if compensation is due:

- 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.

While I accept the photos of the damage to the fridge, I find that the Landlord has not met the burden of proof to establish the value of the damage or loss. The Landlord testified that the part to fix the fridge is no longer available, so the entire door needs to be replaced, but as this work has not yet been completed, I find that the Landlord has not proven that the requested amount is required to do the repairs.

Window handle: As the Landlord has not yet completed the repair of the window handle and submitted an estimated value only, I find that she has not proven that she experienced a loss or proven the value of that loss, as per the four-part test outlined above. As such, I decline to award compensation for the repair of the window handle.

Mattress replacement: I accept the photos of the mattress showing stains, as well as the tenancy agreement that outlines that a mattress was provided for the Tenant to use during the tenancy. However, as the mattress was purchased new in 2016 and used during the tenancy, it is reasonable to expect some wear and tear, along with the regular life expectancy of a mattress.

As such, I find that the Tenant is not responsible for providing a brand-new mattress to the Landlord, and instead is responsible for providing compensation for any damages to the mattress that are beyond reasonable wear and tear. I refer to Section 37(2)(a) of the *Act* which states the following:

- (2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I accept the photos of the mattress that show some staining that may have been difficult to remove and may be considered beyond reasonable wear and tear. I accept the undisputed testimony of the Landlord that she attempted to clean the mattress prior to purchasing a new one. However, I find insufficient evidence to demonstrate that professional cleaning was attempted or that there were no other options available besides replacement of the mattress. As such, I decline to award the full cost of the mattress replacement and instead, I award nominal compensation in the amount of \$250.00.

Supplies: The Landlord has claimed \$5.03 for light bulbs, super glue and envelopes. I accept the receipt submitted into evidence as well as the undisputed testimony of the Landlord that some lightbulbs needed replacing. However, I find insufficient evidence to establish that super glue was required. I also note that similar to the cost of sending registered mail, envelopes may be required as part of the Dispute Resolution process, but are not compensable costs. As such, I award \$2.24 for the cost of the lightbulbs only, including tax.

Plumbing costs: I refer back to the four-part test for compensation as outlined above. I accept that the garburator and bathtub spout were not working and were repaired at a cost of \$163.80. However, I find insufficient evidence to prove that the damage was caused by the Tenant. As the issue were not noted on the move-out Condition Inspection Report, and the repairs took place during the next tenancy in the rental unit, I find that the Landlord has not proven that the Tenant was responsible for the damage and should be responsible for the cost of repairs. As such, I decline to award compensation for the plumbing costs.

Filing fee: As the Landlord was partially successful with her Application for Dispute Resolution, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord will be issued a Monetary Order in the amount outlined below.

February 2018 rent	\$1,575.00
February 2018 late payment fee	\$25.00
Utilities February 2018	\$40.53
Liquidated damages	\$800.00
Cleaning and supplies	\$208.74
Re-keying	\$32.47
Fob replacement x 2	\$100.00
Move-out fee	\$100.00
Closet door repair	\$4.13
Mattress damage	\$250.00
Lightbulbs	\$2.24
Filing fee	\$100.00
Total owing to Landlord	\$3,238.11

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,238.11** for rent owed for February 2018, for damages and repairs as outlined above and for 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: September 13, 2018

Residential Tenancy Branch