



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RADKE BROS. CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, 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 monetary compensation for damages, for unpaid rent, to retain the security deposit towards compensation owing, and for the recovery of the filing fee paid for this application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Tenant during the approximately 22-minute hearing.

The Landlord provided testimony that the Notice of Dispute Resolution Proceeding package was sent to the Tenant by registered mail. The tracking information for the mail was submitted into evidence and confirms that the Tenant signed for the package on May 2, 2018.

The Landlord sent a second package to the Tenant on September 19, 2018 with copies of their evidence. They stated that this package was returned to them as unclaimed. The registered mail tracking number was provided during the hearing and the Canada Post website confirms that the package was unclaimed and returned to the sender.

Therefore, I find that the Tenant was duly served with the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence in accordance with Sections 88 and 89 of 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.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards any compensation owing?

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 July 1, 2015 and the Tenant moved out on April 9, 2018. Monthly rent at the end of the tenancy was \$1,367.00. A security deposit in the amount of \$641.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the security deposit amount and the date the tenancy started.

On March 28, 2018, the Tenant provided the Landlord with notice that he would be vacating the rental unit on April 30, 2018. The Landlord stated that he then notified them that he wasn't sure what day he would be moving out. On April 7, 2018, he let the Landlord know he would be moving out on April 9, 2018. The Tenant's notice to vacate, dated March 28, 2018, was submitted into evidence.

When notified that the Tenant was moving out on April 30, 2018, the Landlord asked the Tenant for a time to complete the move-out inspection. However, when they received notification that he was moving out on April 9, 2018, they scheduled a time for a move-out inspection on April 9, 2018.

The Condition Inspection Report was submitted into evidence. The move-in inspection was completed on July 1, 2015 and signed by the Tenant and an agent for the Landlord. The Landlord stated that at the scheduled time for the move-out inspection, the Tenant advised them that he was in a rush and unable to participate in the walk-through. Instead, he signed and dated the Condition Inspection Report and initialled stating his agreement to a deduction of \$86.32 for cleaning the drapes and \$30.00 for window washing.

The Tenant also initialled next to 'cleaning', but the Landlord stated that the amount had not been determined. Once the cleaning was completed, the Landlord added in the amount of \$300.00. The Landlord also noted on the move-out inspection rental arrears in the amount of \$1,367.00, but this was not initialled by the Tenant.

The Landlord has claimed for a total amount of \$1,783.32. \$86.32 for cleaning the drapes, \$30.00 for window washing, \$300.00 for cleaning and rent for April 2018 in the amount of \$1,367.00.

The Landlord stated that the rental unit was not cleaned prior to the Tenant moving out. They submitted many photos into evidence showing various areas of the rental unit that had not been cleaned. The Condition Inspection Report also notes areas throughout the rental unit that had not been cleaned. An invoice for cleaning the rental unit was submitted into evidence dated April 24, 2018 for 12 hours of cleaning at \$25.00, for a total of \$300.00.

A receipt for cleaning the drapes, dated April 9, 2018, was also submitted into evidence for the amount of \$86.32. The Landlord stated that they paid cash in the amount of \$30.00 for cleaning the windows in the rental unit. A hand-written receipt for \$30.00 was included in evidence.

The Landlord is also claiming \$1,367.00 in unpaid rent for April 2018 as they stated the Tenant did not pay rent for April. The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on April 2, 2018. The 10 Day Notice was submitted into evidence.

The Landlord provided testimony that they began advertising the unit for re-rental on March 29, 2018, after receiving the Tenant's notice. The rental unit was first advertised for May 1, 2018, but after receiving notification that the Tenant was vacating on April 9, 2018, they advertised for April 15th as well. They were not able to find a suitable new tenant until May 1, 2018. The Landlord stated that they advertised the unit for rent in the amount of \$1,422.00.

The Tenant's forwarding address was provided to the Landlord on the Condition Inspection Report on April 9, 2018.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), 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.

As the tenancy ended on April 9, 2018, the same day that the Tenant's forwarding address was provided in writing, I find that the Landlord had 15 days from this date to return the security deposit or file a claim against it. As the Landlord filed an Application for Dispute Resolution on April 13, 2018, I find that they applied within the time allowable under the *Act*. Therefore, the Landlord may retain the security deposit towards any compensation owed.

As for the Landlord's claims for cleaning the drapes, the windows and the rental unit, I find sufficient evidence before me that there was significant cleaning required in the rental unit after the Tenant moved out. I accept the photos that show many areas of the unit were left uncleaned. I note that in accordance with Section 37(2), a tenant has a responsibility to leave a rental unit reasonably clean, other than reasonable wear and tear. The photos submitted by the Landlord do not show the rental unit as reasonably clean.

I also find evidence before me of the value of the Landlord's loss, in the form of receipts or statements outlining the amount that was paid by the Landlord.

As such, I find that the Landlord is entitled to compensation in the amount of \$86.32 for cleaning the drapes, \$30.00 for cleaning the windows, and \$300.00 for general cleaning.

As for the Landlord's claim for unpaid rent for April 2018, I refer to Section 45(1) of the *Act* which states that a tenant may give notice to vacate the rental unit at least one full rental month in advance. As such, I find that the Tenant's notice given on March 28, 2018 to end the tenancy on April 30, 2018 was in accordance with this section of the *Act*. The rent for April 2018 was due on April 1, 2018 as required by the tenancy agreement, regardless of whether the Tenant vacated the rental unit earlier than April 30, 2018.

I also note that in accordance with Section 7 of the *Act*, a party claiming that they experienced a loss due to the other party's non-compliance must do what is reasonable to minimize those losses.

I accept the verbal testimony of the Landlord that they began advertising the unit for re-rental right away after receiving notice from the Tenant. They also stated that as soon as they found out he was moving early, they attempted to find a new tenant for mid-April 2018. I also find that the advertised rental rate of \$1,422.00 was not significantly higher than the rent the Tenant was paying and therefore should not have impacted the ability to find a new tenant.

As such, I find that the Landlord took reasonable steps to minimize the loss they experienced. However, as they were unable to re-rent the unit until May 1, 2018, they experienced a full month of rental income loss. As the Tenant's notice was to end the tenancy at the end of the month, I find that the Tenant owed rent for April 2018. The Landlord is therefore awarded compensation in the amount of \$1,367.00.

As the Landlord was successful in their Application, I also award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord is awarded a Monetary Order in the amount outlined below:

Cleaning of drapes	\$86.32
Window washing	\$30.00
Cleaning	\$300.00
April 2018 rent	\$1,367.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$641.00)</i>
Total owing to Landlord	\$1,242.32

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,242.32** for cleaning costs, April 2018 rent, 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: October 26, 2018

Residential Tenancy Branch