



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 14, 2018 (the “Application”). The Landlord applied for compensation for damage to the rental unit, to recover unpaid rent and for reimbursement for the filing fee. The Landlord sought to keep the security deposit.

The Landlord appeared at the hearing with Legal Counsel. The Tenant did not appear. I explained the hearing process to the Landlord and Legal Counsel and neither had questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. This matter originally came before me for a hearing on July 6, 2018. I had addressed service of the hearing package and Landlord’s evidence at that hearing and issued an interim decision July 16, 2018. This decision should be read in conjunction with my interim decision. In the interim decision, the Landlord was ordered to serve the hearing package for the adjourned hearing, a copy of the Application and the Landlord’s evidence on the Tenant in accordance with section 89(1) of the *Residential Tenancy Act* (the “Act”).

The Landlord had submitted Affidavits in relation to service of the hearing package and evidence. The first Affidavit states that the affiant sent the hearing package and evidence by registered mail to the forwarding address provided by the Tenant on July 19, 2018. The registered mail receipt is attached and shows the tracking number. It also shows that the package was addressed to the Tenant and sent to the forwarding address. A text message from the Tenant dated March 30, 2018 is also attached. The Tenant provided her forwarding address in this text.

The Landlord submitted evidence indicating a process server had attempted to personally serve the Tenant at the forwarding address provided on July 19, 2018 without success. In the first Affidavit, the affiant states that she phoned the Tenant July 25, 2018 to obtain a new address but the Tenant would not provide her with one.

Legal Counsel advised that the package was returned to them.

Based on the Affidavit evidence submitted, I find the Tenant was served with the hearing package and evidence in accordance with section 89(1)(d) of the *Act*. The Tenant is deemed to have received the hearing package and evidence pursuant to section 90 of the *Act*. Based on the Affidavit evidence, I find the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

I acknowledge that the package was returned and there is evidence before me that the Tenant moved. However, the forwarding address is the address the Tenant provided as the address to contact her at. In my view, the Landlord is entitled to serve the Tenant at that address. Further, based on the Affidavit submitted, I accept that the Landlord attempted to obtain an updated address from the Tenant and the Tenant refused to provide one. If the Tenant wanted documents sent somewhere other than the forwarding address provided to the Landlord, she should have provided an updated address. Given the Tenant did not, I find that the Landlord was entitled to serve her at the forwarding address she originally provided.

I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. It is between the Landlord and Tenant regarding the rental unit. The tenancy started May 1, 2017 and was for a fixed term of two years ending April 30, 2019. The rent was \$1,500.00 per month due on the first day of each month. The Tenant paid a \$750.00 security deposit and no pet damage deposit. The agreement is signed by the Landlord and Tenant.

The Landlord confirmed she still holds the security deposit.

In relation to the end of the tenancy, the Landlord testified that there had been a previous hearing between the parties at which an Order of Possession was issued for April 30, 2018. The Landlord testified that after the hearing, the neighbours called and told her the Tenant had

a moving van at the rental unit. The Landlord said the neighbours did not see the Tenant at the rental unit after March 30, 2018.

The Landlord testified that she received the Tenant's forwarding address by text message March 30, 2018. She took no issue with the form in which the forwarding address was provided. This is the text message attached to the Affidavit in relation to service as noted above.

The Landlord confirmed she filed the Application May 14, 2018.

The Landlord testified that the Tenant did not agree she could keep some or all of the security deposit at the end of the tenancy. She said she did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Landlord testified that a move-in inspection was not done. The Landlord testified that she did a move-out inspection on her own on April 30, 2018. She said she provided the Tenant with two opportunities to do the inspection but that the second opportunity was not provided on the RTB form. The Landlord testified that she completed a Condition Inspection Report but did not provide a copy to the Tenant.

The Landlord sought the following compensation:

Item	Description	Amount
1	Painting interior	\$484.44
2	Painting accessories	\$24.97
3	Cleaning smell and duct	\$367.50
4	Fuel	\$69.46
5	Fridge and stove	\$500.00
	TOTAL	\$1446.37

I note that the Monetary Order Worksheet shows the total as \$1,446.75; however, the above totals \$1,446.37.

Item #1 and 2

In relation to painting, the Landlord testified as follows. The Tenant destroyed the walls in the rental unit. She left writing on the walls. The writing would not come off and the walls had to be repainted. The writing was not there at the start of the tenancy.

The Landlord testified that the paint was six months old at the start of the tenancy. She said the Tenant painted the house on her own accord when she took possession of it.

The Landlord had submitted an Affidavit in relation to the walls as well. It states that there was black crayon and food smeared on the walls.

The Landlord submitted photos of the walls with the black crayon on them. The Landlord submitted a receipt for the paint and painting accessories.

Item #3

In relation to cleaning due to the smell, the Landlord testified as follows. The Tenant left food in the fridge and freezer and left the fridge and freezer unplugged. The Tenant vacated the rental unit March 30, 2018 and the Landlord did not go into the rental unit until April 30, 2018. The food would have sat there for a month. The weather was hot at the time. The whole house smelled from the rotting food. There were maggots on the rotting food.

The Landlord further testified that the Tenant left garbage including dirty diapers and food at the bottom of the stairs in the rental unit. She said this also would have been sitting there for a month prior to the Landlord entering the rental unit.

The Landlord testified that the smell would not come out of the house without professionals coming to clean the house. The Landlord testified that she had to have someone come replace the filters for the furnace and clean out the ducts to get rid of the smell. The Landlord said there were toys, food and garbage stuck down the ducts of the heater and that this had to be removed as well as it contributed to the smell.

The Landlord testified that the Tenant is the one who left the toys, food and garbage down the ducts. She said she knows this because the ducts were cleaned years prior.

The Landlord submitted photos of the fridge and freezer filled with food. The Landlord also submitted photos of the garbage left in the rental unit.

The Landlord submitted an Affidavit of an individual who attended the rental unit with her on April 30, 2018. The individual states that the rental unit smelled awful and that the smell was very strong and putrid.

The Landlord submitted a receipt for the cleaning done.

Item #4

The Landlord testified that she had to remove the garbage from the rental unit and that she is claiming for the fuel costs for her truck. The Landlord said she had to make four trips to the dump given the amount of garbage left in the rental unit. The Landlord testified that she had to get rid of the fridge and stove in the unit as well given damage to these appliances.

The Landlord submitted photos of the garbage left in and around the rental unit. The Landlord submitted a receipt for the fuel cost.

Item #5

The Landlord testified as follows in relation to the fridge and stove. The fridge was in a horrible state given the rotting food left in it. The fridge could not be cleaned. She said she tried to clean the fridge but the smell would not go away.

In relation to the stove, the Landlord testified that the elements had been ripped out. The Landlord said the stove was so caked with dirt that it likely would have caught on fire if it had been turned on. She testified that the stove could not be cleaned.

The Landlord testified that the fridge and stove were fine at the start of the tenancy and were only four years old at the time.

The Landlord submitted photos of the fridge and stove. The Landlord submitted a receipt for the fridge and stove showing they cost \$280.00 and \$120.00 and that \$500.00 was paid.

Unpaid Rent

The Landlord testified that an Order of Possession was issued at the previous hearing. She said she originally wanted the Tenant to vacate April 1, 2018 but agreed to April 30, 2018 instead. She said the parties agreed to end the tenancy as of April 30, 2018. She testified that the Tenant never paid rent for April. The Landlord testified that she did not collect rent from the Tenant for the month of March because of the request to have her vacate. Based on the decision from the previous hearing, I assume this relates to the Two Month Notice to End Tenancy for Landlord's Use of Property issued to the Tenant.

Analysis

I accept the undisputed testimony of the Landlord, the Affidavit evidence and the evidence submitted and find the following.

I find the Landlord did not do a move-in inspection. Further, I find the Landlord did not offer the Tenant a second opportunity to do a move-out inspection in the approved form as required by section 17(2)(b) of the *Residential Tenancy Regulations*. I find the Tenant did not extinguish her rights in relation to the security deposit in the circumstances as the Landlord did not comply with sections 23(3) or 35(2) of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished her rights in relation to the security deposit as this only relates to claims for damage to the rental unit and the Landlord has claimed against the security deposit for unpaid rent.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or receiving the Tenant's forwarding address in writing to return the security deposit or file the Application claiming against it. I find the Tenant provided her forwarding address March 30, 2018. I accept the position of the Landlord that the tenancy ended April 30, 2018 pursuant to the Order of Possession issued at the prior arbitration. The Application was filed May 14, 2018, within the 15-day time limit set out in the *Act*. Therefore, the Landlord complied with section 38(1) of the *Act*.

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this *Act*...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

(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...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Damage to the unit

Item #1 and 2

I accept that there was writing and food on the walls of the rental unit at the end of the tenancy based on the Landlord's undisputed testimony and the photos submitted. I accept that this was not present at the start of the tenancy based on the Landlord's undisputed testimony and the nature of the damage. I find the Tenant is the one who caused the damage. I find this is beyond reasonable wear and tear given the nature of the damage. I accept the undisputed testimony of the Landlord that the walls could not be cleaned and had to be repainted. I accept that the paint and accessories cost the amount claimed based on the receipts submitted. I find this amount to be reasonable and note that the Tenant did not appear to dispute the amount.

I accept the undisputed testimony of the Landlord that the paint was six months old at the start of the tenancy. I find the paint would have been 18 months old at the end of the tenancy. I find it reasonable to deduct a portion of the paint cost based on the useful life of paint being four years. I deduct approximately 1/3 of the cost to account for the useful life and find the Landlord is entitled to \$340.00 for items #1 and 2.

I acknowledge that the Tenant repainted the rental unit at the start of the tenancy. I do not find that this changes my analysis. The Tenant is not permitted to repaint and then damage the walls such that the Landlord is required to repaint at the end of the tenancy.

Item #3

I am not satisfied based on the evidence provided that the furnace filters and ducts had to be cleaned due to the smell caused by the rotting food in the fridge and freezer or the garbage left in the rental unit. I did not find the explanation for why this was necessary to be compelling and there is no evidence before me to support that this was necessary.

Further, I cannot accept based on the evidence provided that it was the Tenant who left toys, food and garbage in the ducts and vents for the heater. The Landlord testified that she is aware the Tenant did this because the ducts were cleaned years prior; however, I am not satisfied that this is sufficient to establish that it was the Tenant who did this without the ducts having been cleaned at the start of the tenancy. I am not satisfied that the items are not items that simply accumulated over the years. There was no evidence provided about what was found in the ducts and vents aside from the Landlord's testimony. Given the absence of sufficient evidence, I decline to award the Landlord the amount requested for item #3.

Item #4

I accept that the Tenant left garbage in the rental unit at the end of the tenancy based on the undisputed testimony of the Landlord and the photos submitted. I find this to be a breach of section 37 of the *Act*. I accept that the Landlord had to clean the rental unit and remove the garbage. I accept that the Landlord had to make four trips to the dump based on the undisputed

testimony of the Landlord and the photos of the rental unit at the end of the tenancy. I accept that the Landlord had to pay for fuel for these trips and that the cost of the fuel was as claimed. I find the amount claimed to be reasonable and note that the Tenant did not appear to dispute the amount claimed. I find the Landlord is entitled to the amount requested for item #4.

Item #5

I accept that the Tenant left food in the fridge and freezer and left it unplugged for a month based on the undisputed testimony of the Landlord and the photos submitted. I find this to be a breach of section 37 of the *Act*. I accept that the rotting food caused the fridge to smell and that the fridge could not be cleaned based on the undisputed testimony of the Landlord. I accept that the fridge had to be replaced. I accept that the cost of replacing the fridge was \$280.00 as stated on the receipt submitted. I find this amount to be reasonable.

I accept that the Tenant damaged the stove such that it could not be cleaned based on the undisputed testimony of the Landlord and the photos submitted. I find the Tenant breached section 37 of the *Act* by leaving the stove dirty and damaged. I accept that the Landlord had to replace the stove and accept that this cost \$120.00 based on the receipt submitted. I find this amount to be reasonable.

I acknowledge that the Landlord claimed \$500.00 and that the receipt shows \$500.00 was paid. However, there is no explanation before me for the discrepancy between the amount for the fridge and stove and the amount paid. I decline to award the full \$500.00 without some evidence and explanation as to why the fridge and stove cost more than what is stated on the receipt.

Further, considering the useful life of the fridge and stove, I deduct 1/4 of the amount claimed for each appliance. I find the Landlord is entitled to \$210.00 for the fridge and \$90.00 for the stove.

Unpaid Rent

I accept that the tenancy ended pursuant to the Order of Possession issued for April 30, 2018. Based on the written tenancy agreement and undisputed testimony of the Landlord, I accept that the Tenant owed \$1,500.00 in rent for April. I accept the undisputed testimony of the Landlord that the Tenant did not pay rent for April. I find the Landlord is entitled to recover the unpaid rent for April.

In summary, I find the Landlord is entitled to the following:

Item	Description	Amount
1	Painting interior	\$340.00
2	Painting accessories	Covered in above amount
3	Cleaning smell and duct	\$0.00

4	Fuel	\$69.46
5	Fridge and stove	\$300.00
	TOTAL	\$709.46

In addition, the Landlord is entitled to \$1,500.00 for unpaid rent for April.

Given the Landlord was partially successful in this application, I grant the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,309.46. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the security deposit in the amount of \$750.00. The Landlord is entitled to a further Monetary Order in the amount of \$1,559.46.

Conclusion

The Application is granted in part. The Landlord is entitled to \$2,309.46.

The Landlord is authorized to keep the security deposit in the amount of \$750.00.

The Landlord is entitled to a Monetary Order in the amount of \$1,559.46. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 04, 2018

Residential Tenancy Branch