



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages to the rental unit, permission to retain the security deposit, and for the return of their filing fee. The matter was set for conference call.

One of the Landlords attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post Registered mail, sent on June 18, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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

At the start of the hearing, it was acknowledged that an unidentified party had called into the hearing. This arbitrator made several attempts to have this party identify themselves at the start of the hearing. The unidentified party stated that he was the representative of the Respondent in this case and that he would not identify himself unless this Arbitrator would tell him their full name, home address and personal phone number, business address, business phone number and accreditations. This Arbitrator advised the unidentified party of their name but refused to provide personal information.

Pursuant to section 7.6 of the Residential Tenancy Branch Rules of Procedure, the unidentified individual was asked an additional four times to identify themselves for the hearing record. The unidentified individual refused to identify themselves.

Section 7.6 of the Residential Tenancy Branch Rules of Procedure states the following;

7.6 Identification of people present at a dispute resolution hearing

“Each participant must identify all people who are present with them at the start and anyone who joins them at any time during a hearing.”

The unidentified individual was cautioned that if he did not identify himself, he would be removed from the hearing. The unidentified party continued to refuse to identify themselves and advised this Arbitrator that he was recording the hearing.

Section 6.11 of the Residential Tenancy Branch Rules of Procedure states the following;

6.11 Recording prohibited

“Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.”

Pursuant to section 6.11 of the Residential Tenancy Branch Rules of Procedure, the unidentified individual was ordered to stop recording. The unidentified individual refused to comply. The unidentified individual was advised that if he did not comply with the rules of procedure for these proceeding he would be removed from the hearing and the dispute resolution hearing would be conducted in their absence.

Section 7.3 of the Residential Tenancy Branch Rules of Procedure states the following;

7.3 Consequences of not attending the hearing

“If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.”

The unidentified individual continued to refuse to identify themselves. Therefore, pursuant to section 7.6 of the Rules of Procedure, the unidentified individual was removed for the hearing due to his refusal to identify himself.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The undisputed testimony of the Landlord was that the tenancy began on August 1, 2015, as a month to month tenancy. Rent in the amount of \$900.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$450.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that he was advised by his realtor, around mid-May 2018, that the Tenant had abandoned the rental unit. The Landlord testified that he attended the rental unit on May 20, 2018, and noted that all of the Tenant’s personal possessions had been removed, so he determined that the Tenant had abandoned the rental unit and he took back possession of the property.

The Landlord testified that he contacted the Tenant, via text message and the Tenant provided him with his forwarding address at the end of May. The Landlord testified that he could not remember the exact date but that he would confirm that he had the Tenant’s forwarding address as of May 31, 2018.

The Landlord testified that he conducted the move-out inspection himself as the Tenant refused to attend. The Landlord testified that the Tenant had left the rental unit uncleaned and that the lawn had been damaged due to the Tenant driving on it when he moved out. As well, the Landlord testified that there were four sets of blinds missing from the rental property as well as a large number of roofing materials that he had stored on the rental property. The Landlord provided a copy of the move-in/move-out inspection, 31 pictures of the rental unit and one receipt into documentary evidence.

The Landlord testified that he had hired a local cleaning company to clean the rental unit and that it had taken them 16 hours to clean the rental property at \$20.00 an hour. The Landlord is requesting to recover \$300.00 in cleaning costs. The Landlord provided a copy of the receipt for the cleaning into documentary evidence.

The Landlord testified he had personally repaired the damaged lawns at the end of the tenancy, and that it had taken him 4 hours of labour at \$25.00 an hour to complete the repairs and cost him \$150.00 in supplies and fuel. The Landlord is requesting to recover \$250.00 in lawn repair costs.

The Landlord testified that he is requesting \$500.00 in costs associated in replacing the missing window coverings. The Landlord testified that he had not replaced the window coverings in the rental unit and would not be replacing them as the property had been sold. However, the Landlord believes that he would have gotten more money for the property, during the sale had the missing window coverings still been there. The Landlord is requesting \$500.00 in losses due to the missing window coverings. The Landlord provided a screen print from an online store to show what it would have cost to replace the window coverings into documentary evidence.

The Landlord testified that he had replaced the roof on the property during the tenancy and had stored the old removed roofing materials on the property. When the tenancy had ended the Landlord noted that the roofing materials were gone, and he testified that he believes that the Tenant had taken them. The Landlord testified that he spoke to a local building supplier, who had told him that it would cost him \$4,000.00 to buy those same roofing supplies new. The Landlord is requesting \$2,000.00 for the depreciated cost of the missing used roofing materials.

The Landlord is also requesting to recover his loss of rental income for June 2018, due to the Tenant abandoning the rental property. The Landlord testified that he did not

attempt to re-rent the rental unit after the Tenant left, as the property was up for sale and he had received and accepted an offer for that sale in early June 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental periods notice.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the undisputed testimony of the Landlord that the Tenant moved out of the rental unit without notice. I find that the Tenant failed to comply with the *Act* when he didn't issue a notice to end his tenancy to the Landlord before he moved out.

Additionally, I accept the undisputed testimony of the Landlord that he had deemed that the Tenant had abandoned the rental unit and had taken back possession of the property on May 20, 2018. Therefore, I find that the Landlord was in receipt of notice that the tenancy would be ending as of May 20, 2018, the same day that he deemed the property abandoned.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In this case, I find that the Tenant’s breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for the June 2018 rent and that the Landlord has provided sufficient evidence to prove the value of that loss. However, I also find that the Landlord did not act reasonably to minimize his losses due to the Tenant’s breach, when he did not attempt to re-rent the rental unit for June 2018.

I find that the Landlord was in breach of section 7 of the *Act* when he did not take steps to rent the rental unit after being notified that the Tenant had moved out and he had deemed the rental unit abandoned.

Liability for not complying with this Act or a tenancy agreement

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

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Therefore, I dismiss the Landlord’s claim for the recovery of the loss of rental income for the month of June 2018.

I accept the undisputed testimony of the Landlord that the Tenant left the rental unit in an unclean state when he abandoned the unit. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (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, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenant breached section 37 of the *Act* when he returned the rental unit to the Landlord uncleaned. I also find that the Landlord has provided sufficient documentary evidence to show that he suffered a loss of \$300.00 due to the unclean condition of the rental unit at the end of the tenancy. Therefore, I award the Landlord the return of the cleaning cost in the amount of \$300.00.

I accept the undisputed testimony of the Landlord that the Tenant damaged the lawns when he vacated the rental unit. Section 32(3) of the *Act* states that a Tenant must repair any damage to the rental property that was caused during their tenancy.

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the Tenant breached section 32 of the *Act* when he damaged the lawn on the rental property. I also accept that Landlord's verbal testimony that he personally repaired that lawn, and I find his request costs of \$100.00 for his labour to be reasonable. Therefore, I award the Landlord his costs of \$100.00 in labour for repairing the lawn.

However, I find that the Landlord has not provided sufficient documentary evidence to show that he suffered a \$150.00 loss due to the purchase of supplies and fuel to repair the damaged lawn. Therefore, I dismiss the Landlord claim for the recovery of \$150.00 worth of supplies for lawn repair.

I accept the Landlord's testimony that there were four blinds missing at the end of this tenancy and that it would have cost the Landlord \$500.00 to replace those blinds. However, I also accept the Landlord's testimony that he has not replaced the missing blinds and that he will not be replacing the missing blinds in the future as he sold the property. I have carefully reviewed the Landlord's testimony and his documentary evidence provided in this case, and I find that the Landlord has not provided evidence to show that he suffered a loss in value of his property during the sale due to the missing blinds. As the Landlord has not proven that he suffered a loss, I dismiss the Landlord claim for \$500.00 in losses due to missing blinds.

As for the Landlords' request for \$2,000.00 in missing roofing materials. I find that the Landlord has not submitted any documentary evidence to support his claim for compensation for missing roofing materials in these proceedings. I find that there is no evidence before me that the materials existed, or what their potential value may have been. In the absence of evidence to support the claim, I must I dismiss the Landlord's claim for compensation for missing roofing materials.

Additionally, the Landlord has also requested permission to retain the Tenant's security deposit. Section 38(1) of the *Act* provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of either the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant

Return of security deposit and pet damage deposit

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.

In this case, I find that this tenancy ended on May 20, 2018, the dated the Landlord declared the rental unit abandoned. I also accept the testimony of the Landlord that the Tenant provided his forwarding address to him on May 31, 2018. Accordingly, the Landlord had until June 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application, and I find that the Landlord submitted his Application for Dispute resolution to claim against the deposit on June 20, 2018. Consequently, I find that the Landlord breached section 38(1) of the *Act* by not filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant is entitled to the return of double his security deposit due to the Landlord breach of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I order the Landlord to return \$400.00 of the double security deposit to the Tenant within fifteen days of receiving this decision. The \$400.00 is comprised of the return of double the Tenant's security deposit in the amount of \$900.00, less \$300.00 awarded to the Landlord for cleaning costs, less \$100.00 awarded in labour for lawn repair, and less \$100.00 in the recovery of the filing fee for this hearing.

In order to enforce the above order, I grant the Tenant, a conditional Monetary Order in the amount of \$400.00 to be served on Landlord should the Landlord not repay the outstanding balance within fifteen days of receiving this decision.

<u>Awarded Item's</u>	<u>Hrs</u>	<u>Rate</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent - June 2018			\$900.00	0%	\$0.00
Cleaning			\$300.00	100%	\$300.00
Lawn repair supplies			\$150.00	0%	\$0.00
Lawn repair labour			\$100.00	100%	\$100.00
Blinds			\$500.00	0%	\$0.00
Roofing Material			\$2,000.00	0%	\$0.00
					\$400.00
			Security deposits held		-\$450.00
			Deposit doubled		-\$450.00
					-\$500.00
			Filing fee		\$100.00
			Due		-\$400.00

Conclusion

I grant a conditional **Monetary Order** the Tenant to be served on the condition that the Landlord did not return **\$400.00** as ordered. If this occurs, the Monetary Order must be served upon the Landlord and 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 22, 2018

Residential Tenancy Branch