



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The property manager (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on June 13, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on June 18, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified that this tenancy began on May 1, 2017 and ended on May 31, 2018. Monthly rent in the amount of \$785.20 was payable on the first day of each month. A security deposit of \$377.50 and a pet damage deposit of \$377.50 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. A joint move in inspection and inspection report was signed by the tenant and a representative of the landlord on April 28, 2017. The move in condition inspection report was entered into evidence.

The landlord testified to the following facts. On May 1, 2018 the tenant provided notice to end tenancy for May 31, 2018 and the tenant's forwarding address was provided on that notice. On May 7, 2018 the landlord sent the tenant a letter requesting the tenant attend at the subject rental property at 12:00 p.m. on May 31, 2018 to complete the move out condition inspection and inspection report. The tenant did not respond to this letter. The tenant did not attend at the subject rental property on May 31, 2018 to complete the move out condition inspection report. The move out condition inspection report was completed by the landlord on May 31, 2018. The move out condition inspection report was entered into evidence.

The landlord filed for dispute resolution on June 8, 2018. The landlord is seeking compensation for the following:

Item	Amount
May 2018 rent	\$785.20
Late fee for May 2018 rent	\$25.00
Parking fee for April 2018	\$10.00

Parking fee for May 2018	\$10.00
Cleaning- 4 hrs at \$25.00 per hour	\$100.00
Garbage removal	\$100.00
Materials to repair wall	\$45.25
Labour to repair wall	\$35.00
Key replacement	\$25.00
Administrative fee for attending hearing	\$25.00
GST	\$16.25
Filing fee	\$100.00
Total	\$1,276.70

The landlord provided undisputed testimony that the tenant did not pay any rent for May 2018. A move out statement stating same was entered into evidence. The tenancy agreement states at section 10 "Late payment...are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord".

The landlord testified that the tenant signed a parking agreement which states that the tenant will pay \$10.00 per month for parking and that the parking agreement expires or renews in conjunction with the tenancy agreement. The landlord testified that the tenant did not pay for parking in April or May 2018. The parking agreement was entered into evidence.

The landlord testified that the house was left dirty and entered photographs showing same into evidence. The move in and move out condition inspection reports state that the subject rental property was clean when the tenant moved in and that most of the subject rental property was dirty when the tenant moved out. The landlord testified that in-house cleaning staff spent four hours cleaning the subject rental property at a rate of \$25.00 per hour for a total of \$100.00.

The landlord testified that tenant left garbage and old furniture in the subject rental property which had to be hauled to the dump. The landlord testified that the dump charged the landlord \$100.00 to dispose of the garbage. The landlord did not enter the receipt for the garbage dump into evidence. Photographs of the garbage left in the subject rental property were entered into evidence.

The landlord testified that the tenant damaged the walls in the subject rental property and entered into evidence photographs of damaged walls. The move in condition inspection report states that the walls were in satisfactory condition when the tenant

move in. The move out condition inspection report states that the walls were dirty when the tenant moved out and that the bedroom walls were damaged. The landlord testified that an in-house maintenance person spent one hour repairing the walls at a rate of \$35.00 per hour. The landlord testified that the maintenance person used \$45.25 worth of materials from the landlord's stock room to complete the repairs. The landlord was unable to provide details as to how the material cost was calculated.

The landlord testified that the tenant did not return his keys when he vacated the subject rental property. The landlord testified that their in-house cost for the labour to re-key the subject rental property and the new keys themselves was \$25.00. The landlord was unable to provide a breakdown of the cost.

The landlord testified that she is seeking to recover a \$25.00 administrative fee for the paperwork associated with this hearing.

The landlord testified that GST was charged on the in-house repairs made to the subject rental property in the amount of \$16.25 and that she is seeking reimbursement of this amount. No calculation or breakdown of how the \$16.25 was entered into evidence.

Analysis

Policy Guideline 16 states that 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.

Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$785.20 on May 1, 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$785.20 in unpaid rent.

Late Fee

Section 7 (1)(d) of the *Residential Tenancy Regulation* (the “*Regulation*”) states that a landlord may charge a non-refundable administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

I find that pursuant to section 7 of the *Regulation* and section 10 of the tenancy agreement, the landlord is entitled to charge a non-refundable administration fee for late payment of rent in the amount of \$25.00. I find that the tenant owes the landlord \$25.00 for late payment of rent for the month of May 2018.

Parking Fees

The tenant signed a parking agreement which states that the tenant is obligated to pay \$10.00 per month for parking in conjunction with the tenancy agreement. I find that the tenancy agreement concluded on May 31, 2018. I find that the tenant was obligated to pay the monthly parking fee in the amount of \$10.00 per month until the end of the tenancy which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$20.00 in unpaid parking fees for the months of April and May 2018.

Cleaning Fee

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's testimony and the condition inspection reports, I find that the rental unit required significant cleaning. I find that the cleaning charges provided by the landlord in the amount of \$100.00 are reasonable and that the tenant is responsible for this charge because he failed to clean the subject rental property in accordance with section 37 of the *Act*.

Garbage Fee

The landlord testified that the receipt for the materials taken to the dump was not uploaded into evidence. I find that the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for garbage removal fails.

Repair to Wall

I find that since the landlord was unable to provide details as to how the material cost for the wall repair was calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for the materials for the wall repair fails.

I accept the landlord's testimony that an in-house maintenance person spent one hour repairing the wall and that he was billed out at \$35.00 per hour. I find that the landlord is entitled to recover the \$35.00 labour charge from the tenant.

Key Replacement

I find that since the landlord was unable to provide details as to how the re-keying costs were calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for the re-keying fails.

Administrative Fee

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for an administrative fee associated with attending and or preparing for this hearing.

GST

I find that since the landlord was unable to provide details as to how the GST claim material was calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for GST fails.

Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and pet damage deposit in the amount of \$755.00 in part satisfaction of the monetary claim against the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
May 2018 rent	\$785.20
Late fee for May 2018 rent	\$25.00
Parking fee for April 2018	\$10.00
Parking fee for May 2018	\$10.00
Cleaning- 4 hrs at \$25.00 per hour	\$100.00
Labour to repair wall	\$35.00
Filing fee	\$100.00
Less security deposit	-\$377.50
Less pet damage deposit	-\$377.50
Total	\$310.20

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: November 14, 2018

Residential Tenancy Branch