



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

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 or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord and tenant S.C. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were individually served notice of dispute resolution packages by registered mail on May 4, 2018. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. The landlord testified that she sent both packages to the forwarding address provided by the tenant. The tenant testified that tenant S.L. did not live with her when the notice of dispute resolution package was served on her. The tenant confirmed receipt of the dispute resolution package addressed to her but did not know on what date. I find that the tenant was deemed served with this package on May 9, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Section 89(1)(c) states that an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways: by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord. I find that the landlord sent the notice of dispute resolution to tenant S.L. at an address at which he did not reside. I therefore find that service was not effected on tenant S.L. in accordance with section 89 of the *Act*.

Pursuant to section 64 of the *Act*, I amend the application for dispute resolution to exclude tenant S.L.

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on February 15, 2017 and ended on April 13, 2018. This tenancy was originally a fixed term tenancy set to end on May 15, 2018. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on March 14, 2018 she personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use with an effective date of May 15, 2018 (the "Two Month Notice"). The tenant confirmed receipt of the Two Month Notice on March 14, 2018.

The Two Month Notice stated the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord testified that the tenant abandoned the subject rental property on April 13, 2018. The tenant testified that through e-mail communications the tenant and landlord agreed that the tenant would move out by April 15, 2018. The aforementioned e-mails were not entered into evidence. The tenant testified that on April 13, 2018 she had moved most of her belongings out of the subject rental property but was not able to fit an area rug and a couple other items in her vehicle, so she left them at the subject rental property with the intention of doing another trip to her new accommodations.

The tenant testified that when she came back to retrieve her last few items on April 13, 2018 she found that the landlord had changed the locks and that she was not able to gain entry to the subject rental property. The tenant testified that she called the police who attended and helped her gain access to the property through a window so she could recover the last of her belongings. The landlord testified that she did not change the locks or deny the tenant access to the property.

The landlord denied agreeing to let the tenant move out prior to May 15, 2018 and testified that she only found out that the tenant had vacated the unit when she called the gas company to look into setting up a gas account in her name after the tenants moved out. The landlord testified that the gas company told her that the gas was currently disconnected, the landlord then went to the property to see if anyone was still living there and found it mostly empty except for an area rug and a carpet shampooer.

Both parties agreed that a joint move in condition inspection report was completed on February 4, 2018 by both parties.

Both parties agreed to the following facts. The parties originally agreed, via e-mail, to complete the move out condition inspection on April 15, 2018. The landlord texted the tenant on April 15, 2018 asking her to join the landlord that day for the move out condition inspection. The tenant refused to attend for the move out inspection on April 15, 2018. The landlord texted the tenant on April 16, 2018 asking her to join her that day for a move out condition inspection, the tenant refused. The landlord completed the move out condition inspection alone on April 16, 2018 and sent the tenant a copy of the move out condition inspection report. The landlord entered into evidence an e-mail she received from the tenant dated April 13, 2018 which states:

“As stated in my email April 1st and prior email. We have move out and will hand over keys and do final walk through April 15th. We have taken April 1st to April 15th as part of the free month we are entitled to as you are moving back to the property....you agreed to let us leave April 15th as well. I have all of this in

emails....We will provide you with out forwarding address on April 15th to send out damage deposit and the remaining months rent we are owed.”

No further e-mails regarding the agreed upon move out date were entered into evidence by either party. The move in and move out condition inspection reports were entered into evidence.

The tenant testified that she refused to conduct the move out condition inspection report because the landlord locked her out of the subject rental property on April 13, 2018.

The tenant testified that she provided the landlord with her forwarding address via e-mail on April 12, 2018. The landlord testified that the tenant provided her forwarding address via e-mail on April 16, 2018. Neither party entered the aforementioned e-mails into evidence. I allowed both parties 24 hours to submit e-mails regarding the tenant's provision of a forwarding address in writing, into evidence; however, neither party uploaded the e-mails.

Both parties agreed that the tenants paid all of March 2018's rent and paid nothing for April and May 2018. The landlord filed for dispute resolution on April 29, 2018.

The landlord is seeking monetary compensation for the following items:

Item	Amount
Locks for gate	\$15.43
Cleaning charges	\$1,543.50
Front door handle	\$44.79
Hardwood repair	\$3,375.00
Unpaid rent	\$3,450.00
Yard repair	unknown
Repairs to door and light fixtures	unknown
Missing extension ladder	\$188.00 plus tax
Replace blinds	\$248.00 plus tax
Missing rake	\$20.00
Repair fence	unknown
Registered mail costs	unspecified
Total	\$8,884.72

The landlord testified that the tenant had the combination for a lock on a gate on the landlord's property and when the tenant moved out, the landlord wanted to replace the lock for security reasons. The landlord entered a receipt for a new lock in the amount of \$15.43 into evidence. The tenant testified that the gate didn't have a lock. The condition inspection reports are silent on the presence of a gate lock and no photographs of the gate and lock were entered into evidence.

The landlord testified that the property was filthy when the tenant moved out. The landlord testified that four truck loads of garbage needed to be removed from the property and that there was dog hair everywhere. The landlord testified that the stove was dirty, food was left in the fridge, the washing machine was full of dog hair, and there was mold on the windows and blinds. The landlord entered photographs showing same into evidence. The landlord testified that she hired professional cleaners to clean the house and that it took them several days to complete the cleaning. The landlord submitted a receipt from a cleaning company into evidence in the amount of \$1,543.50.

The tenant testified that the house was not that dirty and that the food she left in the fridge had not gone bad. The tenant testified that she would have cleaned the house if the landlord had not locked her out. The tenant testified that there was mold in the windows but that whenever she cleaned it up it would come back in a day or two.

The landlord testified that after the tenant moved out she added a new door handle with an extra lock on it so that the tenant could not regain entry to the subject rental property. The landlord entered into evidence a receipt which the landlord states was for \$44.79 for the new door handle and lock. Only half of the receipt was entered into evidence, making it impossible to determine what the receipt was for and what the door handle and lock cost. I provided the landlord with 24 hours to upload the complete receipt; however, the landlord did not upload the complete receipt as requested. The tenant testified that she does not believe she should be responsible for this charge.

The landlord testified that the tenant made deep gouges in her hardwood floor which were approximately one cm deep and covered an area roughly eight inches by eight inches. The move in condition inspection report notes that the hard wood floors are worn in places but does not mention any gouges. The move out condition inspection report states that there are gouges in the hardwood floor. The landlord entered photographs of the damaged floor into evidence. The landlord testified that the floors have never been re-finished and are original to the house which was built in 1995. The tenant testified that she did not leave any gouges in the landlord's floor. The landlord entered into evidence an estimate for the repair and re-finishing of the floors in the

amount of \$3,375.00. The landlord testified that she has not yet made the repairs because she did not have the financial resources to do so.

The landlord testified that since the tenants abandoned the subject rental property, she is not required to provide the tenant with one month's free rent. The landlord testified that the tenant owes her for April and ½ of May 2018's rent in the amount of \$3,450.00. The tenant testified that she did not abandon the subject rental property but vacated pursuant to the Two Month Notice. The tenant testified that the landlord allowed her to vacate the property for April 15, 2018 and that she was taking April 1-15, 2018 as part of her one month's free rent and so she did not owe the landlord anything.

The landlord testified that the tenant destroyed her yard which was filled with dog excrement after the tenant moved out. The move in condition inspection report states that the ground and walks were in good condition when the tenants moved in. The move out condition inspection report states that the yard was destroyed at the end of the tenancy. The landlord entered into evidence photographs showing the yard in disrepair. The landlord did not have any receipts or estimates for repair work. The tenant testified that the yard was in the same condition on move in as move out.

The landlord testified that the tenant broke light fixtures and a door. The landlord did not have a receipt or quote for the repair work. The move in condition inspection report does not mention any broken light fixtures or doors. The move out condition inspection report states that the exterior door is broken and another door frame is broken, there is no mention of broken light fixtures. The landlord entered into evidence a photograph of a broken light fixture and a photograph of a door. The landlord did not have any receipts or estimates for repair work. The tenant denied breaking the light fixture or the door. The landlord testified that there was an extension ladder and a rake at the property that the tenant took with her when she moved. The tenancy agreement states that a ladder and garden tools were included with the subject rental property. The landlord testified that the ladder was approximately six years old and the rake was approximately two to three years old. The tenant denied taking the extension ladder with her but stated that she may have taken the rake with her accidentally. The landlord entered into evidence an online advertisement for a new extension ladder in the amount of \$188.00 plus tax and an online advertisement for a new rake in the amount of \$18.98.

The landlord testified that two blinds in the house need to be replaced because they were covered in mold after the tenant moved out. The move in condition inspection report states that the window covering are in good condition. The move out condition inspection report states that the window coverings have mold. The landlord entered into

evidence an online advertisement for new window blinds in the amount of \$124.00 plus tax per blind. The landlord testified that the blinds were installed new in 1995.

The landlord testified that the tenant's dog damaged her fence. The move in and move out condition inspection reports are silent on the condition of the fence. The tenant testified that the neighbour's dog damaged the fence. The landlord did not provide an estimate for the repair of the fence.

The landlord testified that she was seeking reimbursement for the cost of sending documents via registered mail to the tenant for this hearing. The landlord did not state what amount she was seeking reimbursement for.

Analysis

Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

I find that the tenant has not proved, on a balance of probabilities, that she provided the landlord with 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. I find that the official last day of the tenant's tenancy was May 15, 2018.

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*.

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to section 51(1) of the *Act*, I find that the tenant was entitled to receive one month's free rent from the landlord, that being from April 15- May 15, 2018. I find that

the tenant was required to pay rent, pursuant to section 26 of the *Act*, from April 1-14, 2018 in the amount of \$1,150.00.

Monetary Claim

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.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The testimony of the parties in regard to the presence of a combination lock is conflicting. I find that the landlord has not established, on a balance of probabilities, that the gate on the fence at the subject rental property had a combination lock. Therefore, the landlord's claim to replace that lock fails.

The e-mail from the tenant to the landlord on April 13, 2018 makes no reference to being unable to gain access to the subject rental property and the tenant did not submit any other e-mails which make reference to being locked out. I find that tenant has not proved, on a balance of probabilities, that the landlord changed the locks on April 13, 2018, thereby denying her access.

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 and the testimony of both parties, I find that the rental unit required significant cleaning. The landlord submitted into

evidence a cleaning receipt totaling \$1,543.50. I find that the tenant is responsible for this cleaning fee.

The landlord was provided with 24 hours to upload the complete receipt for her claim for a new door handle and lock which she failed to provide. I find that the landlord has not proved the amount of or value of the damage or loss she is claiming and so her claim for the door handle and lock fails.

Policy Guideline #40 states that the useful life for hardwood flooring is 20 years. The landlord testified that the hardwood floor was original to the subject rental property which was built in 1995 and that the floors had never been re-finished. Therefore, at the time the tenant moved out, the hardwood flooring was approximately 23 years old. Since the useful life of the floor had expired when the tenant moved out, I find that the landlord is not entitled to receive a monetary order for the floor's re-finishing.

The landlord did not submit an estimate for the repair of the yard at the subject rental property. I find that the landlord has not proved the amount of or value of the damage or loss she is claiming and so her claim for the repair of her yard fails.

The landlord did not submit an estimate for the repair of light fixtures and the front door. I find that the landlord has not proved the amount of or value of the damage or loss she is claiming and so her claim for the repair of the light fixtures and door fails.

The tenant testified that she did not take the landlord's ladder with her when she moved but that she may have taken the landlord's rake. The landlord did not submit estimates of used ladders and rakes but rather the cost of a brand-new ladder and rake. I find that the landlord has not proved the amount of or value of the loss she is claiming and so her claim fails.

Policy Guideline #40 states that the useful life for drapes and venetian blinds is 20 years. The landlord testified that the blinds were original to the subject rental property which was built in 1995. Therefore, at the time the tenant moved out, the blinds were approximately 23 years old. Since the useful life of the blinds was expired when the tenant moved out, I find that the landlord is not entitled to receive a monetary order for new blinds.

The landlord did not submit an estimate for the repair of the fence in the backyard. I find that the landlord has not proved the amount of or value of the damage or loss she is claiming and so her claim for the repair of the fence fails.

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 the costs of registered mail incurred when preparing for, or participating in, this proceeding.

Security Deposit

I prefer the evidence of the landlord over the evidence of the tenant in regard to the date the tenant provided her forwarding address to the landlord because the tenant's evidence is not in harmony with the e-mail she sent the landlord on April 13, 2018. The tenant's April 13, 2018 e-mail states that she will provide the landlord with her forwarding address on April 15, 2018, whereas in the hearing, the tenant testified that she gave the landlord her forwarding address on April 12, 2018. I accept the landlord's evidence that the tenant provided her with her forwarding address on April 16, 2018 via e-mail. While e-mail does not conform to the service requirements of section 88 of the *Act*, I find that the landlord was sufficiently served for the purposes of this Act, pursuant to section 71 of the *Act*, because the landlord confirmed receipt of the forwarding address on April 16, 2018.

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 in the amount of \$1,150.00 in part satisfaction of her monetary claim against the tenant.

Since the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

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

Item	Amount
Rent April 1-14, 2018	\$1,150.00
Cleaning fee	\$1,543.50
Filing fee	\$100.00
Less security deposit	-\$1,150.00
TOTAL	\$1,643.50.00

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 5, 2018

Residential Tenancy Branch