



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNDL FFL

Introduction

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

- a monetary order for compensation for damage or loss pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agent H.K. attended on behalf of the landlord and is herein referred to as "the landlord". Tenant's agent E.K. attended on behalf of the tenant and is herein referred to as "the tenant".

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding and evidence, served by Canada Post registered mail. The landlord confirmed receipt of the tenant's evidence served by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began on September 1, 2016 with a scheduled end date of August 31, 2017.
- Monthly rent of \$1,400.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$700.00. The matter of the security deposit was addressed through a prior arbitration hearing between the parties on November 2, 2017. The file number for the resulting Decision from that hearing is noted on the cover sheet of this Decision.
- The tenant requested to end the tenancy early, before the fixed-term scheduled end date. The tenant moved out on April 30, 2018. The landlord was able to secure a new renter to move in on June 1, 2018.
- A condition inspection of the rental unit was completed by the landlord and the tenant at the beginning of the tenancy. The landlord did not conduct a move-out inspection with the tenant at the end of the tenancy, therefore there is no condition inspection report pertaining to the agreed upon condition of the rental unit at the end of the tenancy.

Both parties confirmed that, as a result of the tenant ending the fixed term tenancy early, there was agreement between them that the tenant would pay the rent for the month of May 2018, which the tenant did, but there had not been a discussion or agreement at that time as to who would bear the costs for the utilities for that month.

The tenant confirmed that they did not pay utilities for April 2018. The landlord is seeking the unpaid utilities for April 2018 of \$185.45 (gas = \$93.33; electricity = \$42.12; water/garbage = \$50.00). The landlord is also seeking compensation to cover the cost of utilities for May 2018 of \$44.59 (gas = \$24.48; electricity = \$20.11) due to the fact there was no tenant in the rental unit to pay for these costs as the tenant's ended their fixed term tenancy early. During the hearing, the landlord amended their claim to remove the \$50.00 water/garbage cost for May 2018. As this amendment was not prejudicial to the tenant, I allowed the amendment.

The landlord also sought damages for cleaning costs, replacement of light bulbs, and damage to the kitchen cabinetry.

In support of their claim, the landlord submitted into evidence photographs of: a dirty stove fan; alleged mold around the windows that was not cleaned; four burned out light bulbs that were not replaced by the tenant; and damage to two of the kitchen cabinets. The landlord submitted an invoice for the cleaning costs of \$219.00 and a hardware store receipt for the cost of six replacement bulbs of \$39.17. The landlord acknowledged that the kitchen cabinets had not been repaired, however they estimated the damage at around \$200.00.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for cleaning, light bulbs, damages and unpaid utilities.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

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,...

Based on the testimony and evidence before, on a balance of probabilities, I make the following findings in this matter.

The landlord failed to complete a move-out condition inspection with the tenant. Had the tenant participated in a move-out condition inspection, the landlord could have pointed out the minor cleaning deficiencies to the tenant and the tenant would have had an opportunity to rectify these deficiencies, rather than having the landlord pay for a cleaning company. As such, I find that the landlord has not succeeded in their claim for compensation pertaining to cleaning deficiencies and this claim is dismissed.

The landlord submitted photographic evidence of four burned out light bulbs at the end of the tenancy. The tenant was unsure if the light bulbs were burned out at the end of the tenancy. I find the landlord's testimony credible; and the photographic evidence and receipt supports the landlord's testimony. Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides explanation regarding the responsibility of the tenant at the end of a tenancy. The section relevant to this matter has been noted below, in part:

LIGHT BULBS AND FUSES

...

2. The tenant is responsible for:

- *Replacing light bulbs in his or her premises during the tenancy*

As such, I find the tenant contravened the *Act* by failing to replace the burned out light bulbs at the end of their tenancy and the landlord is entitled to recover this cost. I note that the landlord's receipt is for a package of six light bulbs, however, only four light bulbs are the responsibility of the tenant to replace. Therefore, I have adjusted the landlord's claim to reflect 67% of the cost of the submitted receipt, for an amount of \$26.24 (39.17 x 67%).

The landlord submitted photographic evidence of damage to the kitchen cabinets at the end of the tenancy that was not noted on the condition inspection report at the beginning of the tenancy. Therefore, I find there was damage to the cabinet caused by the tenant beyond reasonable wear and tear.

However, the landlord has acknowledged that the kitchen cabinet doors were never replaced, and that the rental unit was able to be rented out at a higher rent to the subsequent new tenants after the tenant moved out. Therefore, I dismiss the landlord's claim for this item as they have failed to establish "the actual monetary amount or value of the damage or loss" as required in a claim for compensation as no money was ever paid out to fix the damage.

The tenant confirmed that they did not pay utilities for April 2018. I note that the November 2, 2017 arbitration hearing resulted in a finding that the tenant was bound by their acceptance of the utility payment arrangement, even if at the end of the tenancy they felt it was not a fair arrangement. As such, I find that the tenant is responsible for the unpaid utilities for April 2018 in the amount of \$185.45.

It is undisputed that the tenant ended the fixed term tenancy agreement early. An agreement was made between the landlord and the tenant that the tenant would pay the cost of rent for the month of May 2018, which the tenant did. The parties never contemplated who would be responsible for the May 2018 utilities cost. The landlord had to pay the utilities cost for May 2018 and is now seeking compensation to recover these costs. I find that the tenant contravened the *Act* by ending the fixed term tenancy early, resulting in the landlord incurring a loss due to the utilities cost that otherwise would have been paid by the residing tenant. As such, I find that the landlord is entitled to recover this loss in the amount of \$44.59 from the tenant due to the tenant's contravention of the *Act*.

As the landlord was partially successful in their application for dispute resolution, the landlord is entitled to recover half of the cost of the filing fee for the application, in the amount of \$50.00.

In summary, I grant the landlord a Monetary Order for compensation as follows:

Item	Amount
Unpaid utilities (April and May 2018)	\$230.04
Light bulb replacement	\$26.24
Partial recovery of the landlord's filing fee for Application	\$50.00
Total Monetary Order in favour of the Landlord	\$306.28

Conclusion

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$306.28 for compensation and recovery of a portion of the filing fee.

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: January 2, 2018

Residential Tenancy Branch