



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties 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 property manager (the "landlord") testified that the tenant was served the notice of dispute resolution package by registered mail on October 10, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package but did not know on what date. I find that the tenant was deemed served with this package on October 15, 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 or compensation, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to retain the tenant's security deposit, 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 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 September 1, 2017 and ended on September 30, 2018. A security deposit of \$550.00 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.

Both parties agreed to the following facts. On September 27, 2018 an Arbitrator of the Residential Tenancy Branch heard the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The tenant's application to cancel the 10 Day Notice was dismissed and the landlord was granted an Order of Possession. This tenancy ended on September 30, 2018, pursuant to the Order of Possession granted on September 27, 2018.

The landlord filed an application with the Residential Tenancy Branch for damages and to retain the tenant's security deposit on October 10, 2018. The landlord is claiming the following damages:

ITEM	AMOUNT
August 2018 rent	\$1,100.00
NSF fee for August 2018	\$25.00
September 2018 rent	\$1,144.00
September parking fee	\$15.00
Late fee for September rent	\$25.00
Final hydro bill	\$40.65
Cleaning fee	\$215.25
Curtain cleaning	\$35.00

Total	\$2,599.90
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Both parties agreed to the following facts. The tenant did not pay any rent for August and September 2018. The tenant's August 2018 rent cheque was unable to be cashed due to insufficient funds. The landlord entered into evidence the cheque returned for insufficient funds.

The landlord testified that the tenancy agreement states that the tenant will be charged a \$25.00 fee for late payment of rent or payment returned for insufficient funds. Section 10 of the tenancy agreement, entered into evidence states:

Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00, plus the amount of any service fees charged by a financial institution to the landlord. Although these fees are payable by the tenant to the landlord, failure to pay the rent on the due date is a breach of a material term on this Agreement....

Both parties agree that at the beginning of the tenancy rent was \$1,100.00 due on the first day of every month. The landlord testified that the tenant was served Notice of Rent Increase in May 2018. The landlord testified that the Notice of Rent Increase increased the rent to \$1,144.00 and came into effect on September 1, 2018. The Notice of Rent Increase was entered into evidence. In the hearing the tenant did not dispute the above; however, in her written submissions she wrote that she did not sign the Notice of Rent Increase and so it was not valid.

Both parties agreed to the following facts. At the beginning of the tenancy the tenant signed a parking agreement in which she agreed to pay \$15.00 per month for parking. The tenant did not pay September 2018's parking fee of \$15.00.

The landlord testified that the tenant did not pay her final hydro bill in the amount of \$40.65. The tenant agreed that she did not pay her final hydro bill and owed this amount to the landlord. The hydro bill was entered into evidence. The tenancy agreement states that electricity is not included in the rent.

The landlord testified that the tenant did not clean the subject rental property when she moved out and so he had to hire a cleaner to clean the subject rental property and shampoo the carpets. The landlord entered into evidence a receipt totalling \$215.25 for cleaning and carpet cleaning. The tenant testified that her son vacuumed the subject rental property and that she keeps a clean house. The tenant did not believe the

property required further cleaning after she vacated. The landlord entered into evidence photographs of the subject rental property after the tenant vacated which show a dirty oven, fridge and balcony. The tenant's written submissions state that the photographs entered into evidence by the landlord are of a different apartment, not hers; however, she did agree that she did not clean the stove. The allegations made in the tenant's written submissions were not made at the hearing.

The landlord testified that section 23 of the Tenancy Agreement states that the tenant is required to have the carpets and window coverings professionally cleaned at the end of the tenancy if they were new or professionally cleaned at the beginning of the tenancy. The landlord entered into evidence the move in condition inspection report signed by both parties which states that the carpets and drapes were new when the tenant moved in.

The landlord testified that he had the window coverings professionally cleaned at the end of the tenancy and entered into evidence a receipt for same in the amount of \$35.00.

Analysis

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 \$1,100.00 on August 1, 2018 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,100.00 in unpaid rent for August 2018.

Section 42(1) of the *Act* states that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.

Section 42(2) of the *Act* states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 42(3) of the *Act* states that a notice of a rent increase must be in the approved form.

In the hearing the tenant did not dispute receiving the Notice of Rent Increase in May 2018; only her written submission denied its validity because she did not sign it. The Notice of Rent Increase does not require the tenant's signature to be valid. As the tenant did not dispute receiving the Notice of Rent Increase, I accept the landlord's testimony that service of the Notice of Rent increase was effected on the tenant in May 2018.

I find that the landlord complied with the requirements of sections 42(1), 42(2) and 43(3) of the *Act*. I therefore find that the Notice of Rent Increase is effective as stated and that the tenant's rent for September 2018 was \$1,144.00.

Pursuant to section 26 of the *Act*, I find that the tenant was obligated to pay September 2018's rent to the landlord in the amount of \$1,144.00 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,144.00 in unpaid rent for September 2018.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the tenancy agreement provides for a \$25.00 fee for late payment of rent and rent payments returned N.S.F. I find that the landlord is entitled to recover from the tenant \$25.00 for the August 2018 N.S.F. payment. I find that the landlord is entitled to recover from the tenant \$25.00 for the late payment of September 2018's rent.

I find that the tenant signed a parking agreement with the landlord for \$15.00 per month and that she failed to pay the parking fee for September 2018. I therefore find that the landlord is entitled to recover the \$15.00 from the tenant for September 2018's parking fee.

As the tenancy agreement states that electricity is not included in the rent and both parties agreed that the outstanding hydro bill in the amount of \$40.65 was owed by the tenant to the landlord, I find that the landlord is entitled to recover \$40.65 from the tenant.

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.

At the hearing the tenant made no mention of the accusation she made in her written submissions that the photographs entered into evidence by the landlord were not of the subject rental property. Since I have found no further corroborating evidence to the written claim of the tenant, I find that the tenant has not proved on a balance of probabilities, that the photographs entered into evidence are of a different rental property than the one in question.

Based on the photographs entered into evidence by the landlord, and the landlord's testimony I find that the subject rental property, carpets, and window coverings required cleaning at the end of the tenancy. The landlord submitted into evidence, cleaning receipts totaling \$250.25. I find that the tenant is responsible for these cleaning fees.

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 deposit 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 due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$550.00 in part satisfaction of his monetary claim against the tenant.

As the landlord was successful in his application, I find that he 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
August 2018 rent	\$1,100.00
NSF fee for August 2018	\$25.00
September 2018 rent	\$1,144.00
September parking fee	\$15.00
Late fee for September rent	\$25.00
Final hydro bill	\$40.65
Cleaning fee	\$215.25
Curtain cleaning	\$35.00
Filing fee	\$100.00
Less security deposit	-\$550
Total	\$2,149.90

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: February 06, 2019

Residential Tenancy Branch