



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YASMIN NANJI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and provided affirmed testimony. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

The tenants acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. I find the tenants were served in accordance with section 89 of the *Act*.

The tenants submitted photographs and documentary materials copies of which they did not provide to the landlord as required under the *Act*. Accordingly, I will not consider these materials in my Decision.

On October 19, 2018, the landlord filed a Notice of Amendment to increase the monetary amount and change the tenant's address.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided affirmed evidence as follows. The parties entered into a residential tenancy agreement which started February 1, 2018 and continued until September 30, 2018. The unit was three furnished rooms with a bathroom and kitchen shared with other tenants. The rent was \$700.00 a month payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$300.00 which is held by the landlord. The tenants did not authorize the landlord to retain the security deposit. The tenants did not provide a forwarding address to the landlord when they vacated.

The landlord submitted a copy of the tenancy agreement.

The landlord claimed that the tenants left the unit without notice and she requested \$700.00 for loss of rent for one month (October 2018). The landlord testified that at the end of the tenancy, the unit needed cleaning and painting. She stated that the tenants took the mattress/box spring/mattress cover ("the bed"), keys and a ceiling light cover when they left for which she requests reimbursement. She also claimed the tenants damaged a window screen for which she claimed compensation and left garbage which she removed.

At the hearing, the landlord withdrew her request for compensation of other furnishings and kitchen supplies listed in the monetary order worksheets which she initially claimed the tenants took when they left. The landlord clarified her claim at the hearing and adjusted the amounts claimed on the remainder of items on the monetary worksheet.

No condition inspection was conducted on moving in or moving out. The landlord filed her claim on October 18, 2018.

I summarize the landlord's claim as follows:

ITEM	AMOUNT
Rent for October 2018	\$700.00

Painting	\$200.00
Cleaning	\$150.00
Removal of garbage	\$250.00
Reimbursement for bed	\$685.00
Reimbursement replacement locks	\$255.00
Reimbursement ceiling light cover	\$10.00
Window screen replacement	\$42.00
Security Deposit	(\$300.00)
AMOUNT LANDLORD CLAIMED	\$1,992.00

I examine each of the landlord's claims in turn.

Rent for October 2018

The parties agreed the tenants provided notice in September 2018 that they were leaving at the end of September 2018. The tenants stated they provided notice by text, a method used to communicate between the parties, on September 5, 2018. They stated the landlord agreed by text that they could move out and that she reminded them to make sure the unit was clean.

On the other hand, the landlord stated the tenants did not give notice until September 16, 2018. The notice was only verbal. She asked for notice in writing, the tenants failed to provide proper notice, and, as a result, the landlord was unable to advertise and find replacement tenants for October 2019. The landlord therefore claims rent in the amount of \$700.00 for October 2019.

The landlord submitted no evidence of her efforts to find replacement tenants.

Painting

The landlord submitted photographs showing several child's stickers on two walls. She claimed that she hired someone to remove the stickers which damaged the two walls, thereby requiring that the walls be repaired and repainted. She submitted an invoice for painting dated January 17, 2019 (3.5 months after the tenants vacated) for \$210.60 which does not specify the tenants' unit.

The tenants agreed they were responsible for the stickers on the walls. They agreed to compensate the landlord in the amount of \$45.00 for removal of the stickers and touching up the wall with paint. They denied removal of the stickers caused any damage and stated the unit did not need painting otherwise.

Cleaning

The landlord submitted many undated photographs showing an extremely dirty bathroom, kitchen and flooring and claimed the photos were indicative of the state in which the tenants left the unit. She also filed an undated copy of a money transfer to a cleaner in the amount of \$150.00. The landlord also submitted undated photographs of a clean kitchen and unit which she testified were accurate photographs of the condition of the unit at the beginning of the tenancy.

The tenants testified they submitted pictures monthly to the landlord to show that they were cleaning their unit and that it was in faultless condition. They stated they thoroughly cleaned the unit before leaving. The tenants denied that the undated photographs reflect the condition of the unit at the beginning of the tenancy or when they vacated. They questioned whether the photographs were of their unit. In any event, they stated other people used the kitchen and bathroom and they were not fully responsible for the cleanliness of those shared areas.

Removal of Garbage

The landlord claimed the tenants left garbage both within the unit and outside requiring her to incur removal costs of \$250.00, for which she submitted no documentary evidence.

The tenants stated they left the premises reasonably clean and deny that they are responsible for any accumulated debris. They point out that several people lived in the building and could be responsible for any debris.

Reimbursement for Bed

The landlord claimed the unit contained a bed which she had purchased in 2017, shortly prior to the tenancy, which the tenants took when they left.

The landlord submitted no receipts. She claimed a replacement cost of \$640.00 for the bed based on a copy of an e-transfer to a private individual for \$440.00 on October 2, 2018 which does not include a description of the reason for the transfer. The landlord stated she overlooked uploading the remaining receipts.

The tenants deny that they took anything that did not belong to them when they left. They stated they have only a small car and were incapable of taking a bed.

Reimbursement Replacement Locks

The landlord claimed that the tenants took the keys for the unit when they left as a result of which she incurred replacement lock costs of \$255.00.

The tenants stated that wanted to hand the keys directly to the landlord and asked her to come to the unit before they left. The tenants explained they did not want to leave the keys anywhere accessible to other tenants. They claimed the landlord failed or refused to come to the unit before they left. They deny they are responsible for replacement of the locks as the landlord had extra keys.

Reimbursement Window Screen

The tenants agreed to reimburse the landlord in the amount of \$42.00 as requested by the landlord for the replacement cost of a damaged window screen.

Reimbursement Ceiling Light Cover

The landlord testified that the tenants took the ceiling light cover when they left thereby requiring that she replace it at a cost of \$10.00. The landlord submitted a copy of a receipt in support of this expense.

The tenants denied that they took the cover and stated that the cover was not present during the tenancy.

Filing Fee

The landlord claimed reimbursement of the filing fee of \$100.00.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Unfortunately, in this case, no inspection was conducted on moving in or moving out.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The primary purpose of compensation is, generally speaking, to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

Therefore, the landlord 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 onus is on the landlord to prove entitlement to a claim for a monetary award. I will deal with each of the landlord's claims in turn.

Rent for October 2018

The parties gave contradictory evidence regarding the tenants' provision of notice and the landlord's acceptance. The landlord acknowledged two weeks' notice. I accept the tenants' evidence that they provided the landlord with 3 weeks' notice of their intention to vacate on September 30, 2018 and that the landlord accepted their notice, an exchange which took place by text.

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The landlord failed to provide any evidence of her efforts to find replacement tenants.

As such, based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support her claim for rent for the month of October 2018.

Painting

Considering the evidence and the testimony of the parties, the balance of probabilities, and the probable time and cost of removing some stickers from walls, I find the landlord has not met the burden of proof for reimbursement of the cost of painting two walls.

I accept the tenants' acknowledgement of responsibility for the stickers' removal. I find the tenants responsible to reimburse the landlord in the amount of \$45.00 to repair the wall as a reasonable amount in compensation for this damage. I accordingly grant the landlord a monetary award in this regard in the amount of \$45.00.

Cleaning

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. After listening to the testimony of the parties and viewing the evidence, I accept the tenants' evidence the tenants left the premises reasonably clean. I do not accept as evidence the undated photographs of the landlord purportedly showing the need for cleaning, especially since many of the photographs related to shared spaces.

I do not accept the undated transfer of money as evidence the landlord incurred any cleaning expense regarding this unit.

I find the landlord has not met the burden of proof with this aspect of her claim.

Therefore, based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support her claim of \$150.00 for reimbursement of cleaning costs.

Removal of garbage

Pursuant to section 37 of the *Act*, at the end of the tenancy the tenants are required to leave the rental unit undamaged, reasonably clean and vacant, which means removal of the tenants' personal possessions and garbage. Should the tenant fail to comply with this obligation, the landlord may seek recovery of losses associated to the tenant's violation.

The tenants deny that they left any garbage or debris. The landlord submitted no documentary evidence or photographs in support of this aspect of her claim.

Therefore, based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support her claim of \$250.00 for reimbursement of her cost of removal of garbage.

Reimbursement Replacement Locks

Residential Tenancy Policy Guideline 7: Locks and Access states as follows:

The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit.

Based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support her claim of \$255.00 for replacement of locks.

Reimbursement Ceiling Light Cover

I find the landlord has not established that this item was present in the unit at the time the tenancy began or that it was missing when the tenants vacated.

Therefore, based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the landlord has failed to provide sufficient evidence to support her claim of reimbursement of \$10.00 for replacement of the ceiling light cover.

Window Screen Replacement

The tenants agreed to compensate the landlord for \$42.00, the amount claimed by the landlord as compensation for damage to a window screen.

Accordingly, I grant the landlord a monetary award in the amount of \$42.00 in this regard.

Security Deposit

Section 38(1)(d) of the *Act* requires the landlord to either return the tenants' deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing unless the tenant waives a right to the return of the deposits in writing under section 38(4)(a).

The *Act* states:

- 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.

To obtain return of the deposits, the tenants must provide the landlord with written notice of a forwarding address within one year. The landlord testified that the tenants had not given the landlord written notice of a forwarding address.

The landlord testified she conducted enquiries to determine the tenants' forwarding address for filing and service of this Application for Dispute Resolution. The landlord acknowledged during the hearing that she knows the tenants' forwarding address. I therefore order, effective February 12, 2019, the landlord is deemed served in writing with the forwarding address of the tenants for the return of the deposits pursuant to section 39.

As the landlord has been partially successful in her claim, I grant her partial reimbursement of the cost of the filing fee in the amount of \$25.00.

Award

I grant the landlord a monetary order in the amount of \$112.00. A summary of my award follows:

ITEM	AMOUNT
Rent for October 2018	\$0.00
Painting	\$45.00
Cleaning	\$0.00
Removal of garbage	\$0.00
Reimbursement for bed	\$0.00
Reimbursement replacement locks	\$0.00
Reimbursement ceiling cover	\$0.00
Window screen replacement	\$42.00
Reimbursement filing fee - partial	\$25.00
TOTAL	\$112.00

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$112.00 of the tenants' security deposit still held by the landlord in partial satisfaction of the monetary award issued in the landlord's favour.

The landlord must return the balance of \$188.00 of the security deposit to the tenants and I grant the tenants a monetary order in this amount. A summary of my award follows:

ITEM	AMOUNT
Security deposit held by landlord	\$300.00
(Less award to landlord)	(\$112.00)
SECURITY DEPOSIT PAYABLE TO TENANTS	\$188.00

Conclusion

I accordingly grant the tenants a monetary order in the amount of \$188.00. The landlord is ordered to pay this sum forthwith.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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 12, 2019

Residential Tenancy Branch