



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prime Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of their filing fee.

An agent for the Landlord, L.C., ("Agent") appeared at the teleconference hearing and gave affirmed testimony, but the Tenant did not attend. I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his evidence orally; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

In the hearing, the Agent noted the Landlord's documentary evidence uploaded to the Residential Tenancy Branch portal, which indicated that the Landlord served the Tenant with the Application for Dispute Resolution and accompanying evidentiary documents via registered mail. The Landlord's evidence included a Canada Post tracking number, which revealed that the package was accepted at the post office on November 13, 2018, that a notice card was left on November 16, 2018, indicating where and when to pick up the package. The tracking information also states: "Recipient not located at address provided. Item has been returned and is en route to the Sender", which happened on November 20, 2018.

In the hearing, the Agent said the Tenant gave the Landlord her forwarding address, which the Agent used for service. The Agent said he confirmed that this address had

not changed; however, the Application package was returned to the Landlord, but there was no indication of why. However, the Landlord's attempted service is consistent with section 89 of the *Act*, so I am satisfied that the Tenant was deemed served five days after the package was sent by registered mail, which was November 18, 2018.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the Landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The Agent said the Tenant moved into the rental unit in February 2017, but because her roommate moved out, the Parties signed a new tenancy agreement in May 2017. That agreement sets out that the tenancy started on May 1, 2017, with a fixed term of 12 months ending on April 30, 2018, at which time the tenancy would change to a month to month basis. The rent was \$900.00 payable on the first day of each month. The tenancy agreement indicated that the Tenant had paid the Landlord a security deposit of \$450.00.

The Agent said that the Landlord did not receive the Tenant's rent for May 2018 and that someone told him that they had seen a U-Haul vehicle at the rental unit in May. The Agent said he gave the Tenant notice on May 20, 2018, that they would be checking the rental unit on May 24, 2018, at 3:30 p.m. The Agent said when they arrived on May 24, 2018, the Tenant was gone and they found their notice with a handwritten note on the back from the Tenant that said:

[Agent's name], Thanks for understanding that kids come first. Place is yours. . . .
.0133/31 = 30/day x 23 days 690 owed → 450 paid + 450 ... We are square. I won't charge for \$200 flooring installed and won't report for not fixing Appliances.

The Agent said the Landlord applied for dispute resolution seeking monies owed for unpaid rent for May and June 2018, as well as compensation for cleaning and painting that was necessary to bring the rental unit back to a useable condition.

The Agent submitted 17 pages of photographs showing the condition of the rental unit after the Tenant had vacated. The photographs illustrated that garbage, dirt and a variety of belongings had been left behind, as well as holes and scratches in the walls

and doors.

The Landlord submitted a monetary worksheet to support the claim for compensation, which sets out the following claims:

1. Rent for May 2018	\$900.00
2. Rent for June 2018	\$900.00
3. Late charges for May and June	\$ 50.00
4. Painting and cleaning	\$850.00
5. Removal of garbage and cleaning	\$950.00
TOTAL	<u>\$3,650.00</u>

The tenancy agreement addendum initialed by the Tenant states that there will be late payment charges of \$4.00 for every day rent is late. It also says that there will be a \$25.00 fee for the first offence of an insufficient funds cheque and that for subsequent offences the charge will double.

The Agent said in the hearing that they had arranged for one person to paint the property, but that the cleaning needed to be done first, which was what this painter had started on. Ultimately, the first person just ended up painting and a second person was hired to take out all of the “stuff” the Tenant had left behind, and then do the actual cleaning after the painting was done.

The Agent said that they supplied the paint and the painter “eyeballed it” and gave them a flat fee. The rental unit is a two story, three bedroom townhouse with a full basement, a living room, a kitchen, and a kitchenette on the main floor and three bedrooms and a bathroom upstairs. The Agent said that the painter did mostly the upstairs; he said the whole house would have cost a lot more.

In terms of mitigating the lost rental income, the Agent said that they have advertisements running regularly. He said, “we rented it up as soon as we got it ready,” which he said was August 1, 2018. When I asked him about it taking two months to get the property ready for renting, he said they were working on other properties, too, at the time. He said at least they didn’t claim for July rent.

The Agent submitted a detailed invoice from the cleaner stating:

Cleaner's name

Address

June 20. /July 24/18

Landlord's name

Address

Worked at Townhouse

Rental Unit Address

Complete clearing out and cleaning out of townhouse, including garbage spoiled food, kitchen supplies, beds, clothes, toys, etc., with four trips to dump, and clean in, under and behind stove and fridge, oven racks, kitchen shelves, cupboards, fixers, kitchen exhaust fan, tub, toilet sink, bathroom exhaust fan, all windows, basement, laundry tubs, cob webs, floors throughout and yard, garbage & dog poop. Contract 950--

The Painter's invoice stated:

July 11/18 – [painter's name]

a) Cleaning & painting #11KV –	- \$850.00
b) Painting ceiling & patching master bedroom wall #27CV	- <u>135.00</u>
	<u>985.00</u>

Analysis

In terms of the Landlord's late rent fee, the *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an 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;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, the Tenant did not pay rent at all, as opposed to having given cheques with insufficient funds. I find that the Landlord cannot impose the \$50.00 fee in this case, as the Agent did not direct me to a section of the *Act* or Regulation that authorizes this.

Section 67 of the *Act* states that “if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.” The condition of the rental unit after the Tenant left is evidence that she breached her responsibilities under section 32 of the *Act* to “repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.” Further, section 37 of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” In this case, I find that the Tenant left the rental unit dirty and littered with garbage and debris. I find the Tenant breached her responsibilities under sections 32 and 37; accordingly, section 67 authorizes me to determine and order that the Tenant must pay the Landlord compensation for these breaches.

The Landlord charged \$850.00 for the painter to do some initial cleaning and to paint three bedrooms and a bathroom upstairs. If this were billed at a reasonable \$30.00 per hour, it would mean the painter had been working for over 28 hours on this part of the house. This equates to four days at 7 hours per day. If the first day was spent cleaning the area to allow for painting, that would mean that the painter spent approximately 5½ hours painting in each room. I find on a balance of probabilities that this is not unreasonable, so I award the Landlord **\$850.00** for cleaning and painting.

The main cleaner’s invoice indicates that she was working on the rental unit for over a month, although the cleaning included the inside and outside of the rental unit, plus trips to the dump. When I consider the condition of the rental unit and the amount of work that had to be done, I find that the cleaner’s fees are reasonable in the circumstances and I award the Landlord the **\$950.00**.

The Landlord indicated that the clean-up and painting took them through July, although he also said they were working on other projects at the same time, which may have side-tracked their efforts on this rental unit. However, as the Agent pointed out, the Landlord did not claim rent from the Tenant for July, so I will allow the Landlord to claim May and June rent from this Tenant, for a total of **\$1,800.00**.

The Landlord was successful with most of the Application, so I also award recovery of the filing fee of **\$100.00**.

Conclusion

The Landlord has established a total monetary claim of \$3,700.00, from which I have deducted the Tenant's \$450.00 security deposit, which has accrued no interest to date. I therefore award the Landlord a total of **\$3,250.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 7, 2019

Residential Tenancy Branch