



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,762.89 pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the dispute resolution package and supporting evidence (the "**Hearing Package**") via registered mail on January 21, 2019. The landlord provided a tracking number confirming this mailing which is reproduced on the cover of this decision.

The landlord testified that he sent the Hearing Package to an address where he was advised the tenant was residing. He attended this address and observed the tenant's vehicle in the driveway on more than one occasion.

I find that the tenant was deemed served with the Hearing Package on January 26, 2019, five days after the landlord mailed it, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,762.89; and
- retain the tenant's security deposit in partial satisfaction of the monetary order requested; and
- recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting May 1, 2018. Monthly rent is \$1,500.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$750.00. The landlord still retains this deposit.

The tenancy agreement contained an addendum signed by both parties which included the following terms:

- 1) tenant is responsible for 70% of all utilities [sic] (water, gas, hydro);
- 2) tenant must show downstairs bill in order to collect the additional 30%;
- 3) carpets are to be steam cleaned on move out;
- 4) tenant is responsible for yard upkeep; and
- 5) no smoking inside.

The rental unit was one of two units in the rental property. The tenant occupied the upper unit.

The landlord testified that, while he did a move-in inspection with the tenant, he did not prepare or provide the tenant with a copy of a move-in inspection report.

On October 29, 2018, the landlord served the tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”). The Notice had an effective date of November 8, 2018, and stated that the tenant owed the landlord \$950.00 in unpaid rent as of October 1, 2019, and \$175.04 in unpaid utilities as of October 29, 2018. The landlord testified that the tenant moved out of the rental property on November 22, 2018.

The landlord submitted into evidence a monetary order worksheet which sets out his claim as follows:

Dump Runs, Painting, Cleaning	\$1,275.00
Skip Trace	\$68.25
Reward for Address of Tenant	\$250.00
New Keys Cut	\$8.94
Process Server	\$131.25
HEPA filter taken by Tenant	\$134.39
Unpaid water bill	\$242.84
Lock set and cleaning supplies	\$70.91
Landfill costs and cleaning supplies	\$80.71
Cleaning supplies	\$50.60
Unpaid November 2018 rent	\$1,500.00
Unpaid October 2018 rent	\$950.00
Total	\$4,762.89

The landlord testified that the tenant did not pay the balance of rent for October 2018, nor any rent for November 2018. In total, the landlord testified that the tenant owes \$2,450.00 in unpaid rent.

He testified that the tenant left the rental unit in a condition that required significant cleaning and repairs. He testified that the rental unit smelled of cigarette smoke. He submitted photos which showed:

- that the tenant left a great deal of garbage at the rental unit;
- that the tenants failed to maintain the yard;
- dents and small scrapes in the wall; and
- cigarette burns in the carpet.

The landlord testified that between November 24 and 28, 2018 he and his girlfriend spent 42.5 hours cleaning and repairing the rental unit and its yard so that it was in a condition that it could be re-rented. He testified that of this time, approximately three hours was spent repairing the wall damage, and ten hours was spent by him making trips to and from the dump to dispose of the large amount of garbage and debris left at the rental unit by the tenants. He testified that he calculated the amount claimed (\$1,275.00) for this work by charging \$30.00 per hour for the work of him and his girlfriend.

The landlord testified that the tenant did not leave a forwarding address, so he hired a skip tracer to try to locate her, which cost \$68.25. He testified that he offered a reward of \$250.00 for the address at which she lived (this offer led to the discovery of the tenant's location). He testified that he first hired a process server to serve the tenant with the Hearing Documents personally, but that this was not successful. He testified that this cost \$131.25. The landlord entered receipts for each of these expenses into evidence.

The landlord testified that he purchased a HEPA filter for the rental unit on September 3, 2018, as the tenant had a cat, and the downstairs tenant had cat allergies. The landlord testified that the tenant took the HEPA filter when she moved out. He entered into evidence a copy of the receipt for the HEPA filter, which shows that it cost \$134.39.

The landlord testified that he asked for the tenant to return the keys to the rental unit prior to her move out, but that she failed to do so. He testified that he had to purchase a new lock set and have copies of the key made. He submitted into evidence a receipt for making the copies of the key (\$8.94) and for the lock set and cleaning supplies (\$70.91).

The landlord testified that the tenant was obligated per the tenancy agreement to pay 70% of the utilities bill. He testified that the tenant failed to pay the water bill for some period of time, and that the outstanding balance from the municipality is \$242.84. However, he testified that this amount does not reflect the fact that the tenant is only responsible for 70% of the water utility, which would be \$169.99. He testified that he erred in including the full amount of the water bill on the monetary order worksheet.

The landlord submitted into evidence two receipts from landfills where he went to dispose of the garbage left by the tenant in the amount totaling \$55.37.

The landlord testified (and submitted receipts in support of his testimony) that he purchased cleaning and repair supplies as follows:

Paint for wall repair	\$23.11
Paint roller	\$2.23
Garbage bags, cleaning supplies	\$19.82
Cleaning supplies and deodorizer	\$48.78
Total	\$93.94

Analysis

I accept the landlord's uncontroverted testimony in its entirety. The amounts he claims are supported by documentary evidence, including receipts. I found his testimony to be credible, internally consistent, and in accordance with the documentary evidence.

Damages Suffered by the Landlord

Pursuant to the tenancy agreement, I find that the tenant was obligated to pay monthly rent of \$1,500.00. I accept the landlord's testimony that the tenant failed to pay \$2,450.00 in rent representing a portion of October 2018 rent, and all of November 2018 rent.

Pursuant to the tenancy agreement, I find that the tenant was obligated to pay 70% of the utilities. I find that the outstanding water bill for the rental unit is \$242.84, and that 70% of this is \$169.99. I find that the tenant failed to pay this amount, as required by the tenancy agreement.

Based on the landlord's testimony and photographic evidence, I find that the rental unit was not left in a condition suitable for re-renting.

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the rental unit was not left reasonably clean, as required by the Act. I find that the tenant left a great deal of garbage and debris at the rental unit, and that the landlord took a reasonable amount of time in travelling to landfills to dispose of it. I also find that the tenant failed to maintain the yard in accordance with the addendum to the tenancy agreement, and that the amount of time spent by the landlord to clean the rental unit and perform yard maintenance to be reasonable. However, upon review of the photographic evidence, I find that the damage to the walls of the rental unit are reasonable wear and tear, and as such, not the tenant's responsibility to repair. I accept the landlord's testimony that he spent three hours fixing and painting the walls.

Accordingly, I find that the landlord and his girlfriend reasonably spent 39.5 cleaning and repairing the rental unit, and disposing of the garbage left behind. I find that \$30.00 per hour is a reasonable rate to charge for such work. In total, I find that the amount of \$1,185.00 is a reasonable amount to charge for the work done by the landlord and his girlfriend.

I find that the landlord incurred reasonable expenses in purchasing cleaning supplies as follows:

- \$19.82 for garbage bags, cleaning supplies; and
- \$48.78 for cleaning supplies and deodorizer.

I do not find it reasonable for the landlord to claim compensation for painting supplies to be used to repair the walls, as I have already found that the damage to the walls of the rental unit is reasonable wear and tear, and not the responsibility of the tenant to repair.

I find that the landlord was reasonable to incur costs of \$55.37 when disposing of garbage left at the rental unit by the tenant.

I find that the tenant did not return the keys to the rental unit at the end of the tenancy. She is obligated to do this per section 37 of the Act (see above). I find that it was reasonable and prudent of the landlord to change the lock to the rental unit, and that he reasonably incurred the following costs in so doing:

- \$8.94 for key duplication; and
- \$70.91 for the lock set and cleaning supplies (which are also reasonably incurred, as I have discussed above).

I find that that the tenant took the HEPA filter when she left the rental unit, and that she was not entitled to do so. I find that the HEPA filter unit was only two month's old when the tenant took it. I find that the replacement cost of this item is its full purchase price of \$134.39.

While I find that the landlord incurred costs associated with locating and serving the tenant in the combined amount of \$449.50, I do not find it reasonable that these charges are passed on to the tenant. The tenant is not required by the Act to provide a forwarding address at the end of the tenancy (although it is a necessary step in requesting the return of the security deposit). Accordingly, any efforts to locate her after the tenancy has ended are better characterized as the landlord's cost of doing business, and are not recoverable from the tenant. Likewise, the use of a process server is not a reasonable expense to be passed on to the tenant. The landlord could have personally served the tenant himself, or served her by registered mail (he had her address). There is no statutory requirement that the tenant be personally served.

Landlord's Entitlement to a Monetary Order

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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

I find that by not paying October and November 2018 rent, while residing in the rental unit, the tenant has breached section 26(1) of the Act:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that by not adequately cleaning the rental unit or returning the keys to landlord, the tenant breached section 37 of the Act (see above).

I find that by not maintaining the yard, the tenant breached the tenancy agreement.

I find that the landlord has proved damages, as set out above, that the following damages were reasonably incurred, and that the landlord reasonably minimized his damages:

Dump Runs, and Cleaning	\$1,185.00
New Keys Cut	\$8.94
HEPA Filter stolen by Tenant	\$134.39
Unpaid water bill	\$169.99
Lock set and cleaning supplies	\$70.91
Landfill costs	\$55.37
Cleaning supplies and garbage bags	\$19.82
Cleaning supplies and deodorizer	\$48.78
Unpaid November 2018 rent	\$1,500.00
Unpaid October 2018 rent	\$950.00
Total	\$4,143.20

Move-in Report and Security Deposit

The landlord has applied to offset the security deposit against any damages suffered.

The landlord testified that he did not complete a condition inspection report. He testified that a walkthrough was conducted. Based on this, I find that an inspection on the rental unit was made, but that the landlord failed to prepare a condition inspection report. The completion of such a report is required by the Section 23(4) of the Act, which states:

Condition inspection: start of tenancy or new pet

(4)The landlord must complete a condition inspection report in accordance with the regulations.

Section 24(2) of the Act states:

Consequences for tenant and landlord if report requirements not met

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with section 24(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report.

Residential Tenancy Policy Guideline 17 states:

C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

- whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the security deposit is extinguished (discussed above) and therefore the tenant is entitled to receive double the security deposit from the landlord.

Accordingly, I order that the landlord pay the tenant \$1,500.00, representing double the monthly rent.

Notwithstanding this extinguishment, the landlord retains the right to make a monetary claim, as per Policy Guideline 17:

B9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

[...]

- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Pursuant to section 72(2), I order that:

- the landlord may retain the security deposit as partial satisfaction of the damages he has sustained as the result of the tenant's breaches of the Act; and
- the landlord may offset funds he is to pay the tenant against the monetary award for damages I have made.

As the landlord has been successful in his application, I order that the tenant pay the landlord his filing fee of \$100.00.

I order that the tenant pay the landlord \$1,993.20, representing the following:

Damage Award	\$4,143.20
Filing Fee	\$100.00
Credit for security deposit	-\$750.00
Double deposit landlord must pay tenant	-\$1,500.00
Total	\$1,993.20

Conclusion

Pursuant to section 67, I order that the tenant pay the landlord \$1,993.20, as indicated above.

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: March 22, 2019

Residential Tenancy Branch