



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 12, 2018 (the “Application”). The Landlord sought compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord confirmed the correct rental unit address which is reflected on the front page of this decision.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and evidence were sent to the Tenant’s forwarding address by registered mail at least one month prior to the hearing. The Landlord testified that the package was returned.

The Landlord had not submitted evidence of service of the hearing package and evidence. The Landlord could not provide the tracking number for the package as he did not have it with him. Nor could the Landlord provide the exact date the package was sent.

The Landlord had submitted a text message from the Tenant on November 29, 2018 with the Tenant’s forwarding address.

Based on the undisputed testimony of the Landlord, I accept that the Tenant was served with the hearing package and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). The Tenant is deemed to have received the package pursuant to section 90 of the *Act*. I also accept that the Tenant received the package in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought compensation as follows:

Item	Description	Amount
1	BC Hydro August	\$23.59
2	BC Hydro September	\$37.94
3	BC Hydro October	\$41.54
4	Cleaning	\$100.00
5	Rent October 7 – November 6, 2018	\$2,900.00
6	Filing fee	\$100.00
	TOTAL	\$3,203.07

A written tenancy agreement was submitted as evidence. The tenancy started August 7, 2018 and was for a fixed term ending August 6, 2019. Rent was \$2,900.00 due on the 7th day of each month. Electricity was not included in the rent. The Tenant paid a \$1,450.00 security deposit. The agreement was signed by the parties.

The Landlord testified as follows.

The tenancy ended October 25, 2018 pursuant to a 10 Day Notice. The Tenant provided a forwarding address via text on November 29, 2018. This was submitted in evidence.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The parties signed a letter stating the security deposit would not be returned until the Landlord received outstanding rent and would be used for cleaning and outstanding bills. This letter was submitted in evidence.

A move-in inspection was done August 10, 2018. The unit was empty at the time. A move-in Condition Inspection Report was completed and signed by the parties. A copy of this was given to the Tenant the same day in person.

A move-out inspection was done October 25th or 26th of 2018. The unit was empty at the time. A move-out Condition Inspection Report was completed and signed by the parties. A copy of this was given to the Tenant the same day in person.

Cleaning

The Tenant had not cleaned the rental unit. He paid a cleaning fee on move-in. The amount claimed was the cost of hiring a professional cleaner. The cleaner did a more thorough clean of the entire rental unit as it had to be spotless.

I asked the Landlord why the Condition Inspection Report did not note the rental unit was dirty other than in relation to the bedrooms needing vacuuming. The Landlord said he may have misunderstood the requirement and he thought the rental unit had to be professionally cleaned at the end of the tenancy.

Utilities

The amounts sought are for electricity which was not included in the rent. The account was in his name and the Tenant was supposed to transfer the money to him. There was nobody in the rental unit from October 25th to October 31st. The Tenant did not pay utilities for August, September or October.

The Landlord submitted a bill which I read to be for October 2, 2018 to October 31, 2018 in the amount of \$33.55. The bill seems to indicate that the previous bill was \$41.54.

Unpaid rent

The Tenant never paid October rent. The Tenant had not authority under the *Act* to withhold rent.

The letter submitted is signed by the parties and states that the Landlord can keep the remainder of the damage deposit after any deductions from the inspection until the point that the Tenant has paid rent amount owing of \$2,900 at which point the Landlord will forward the remainder of the security deposit to the following email address...within 15 business days after receipt of payment for rental amount owing of \$2900. The letter is dated October 25, 2018.

The Landlord submitted a copy of the 10 Day Notice for \$2,900.00 in outstanding rent due October 7, 2018.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 37(2) of the *Act* states:

(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...

Section 26 of the *Act* states:

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.

The tenancy agreement shows the Tenant paid a \$50.00 “move-in fee” and was to have the rental unit professionally cleaned at the end of the tenancy. I understand this to be the cleaning fee the Landlord testified about. Landlords are not permitted to collect this type of fee over and above a security deposit and therefore I consider this to be part of the security deposit pursuant to Policy Guideline 29. Therefore, I consider the Landlord to hold a \$1,500.00 security deposit.

Based on the undisputed testimony of the Landlord, and Condition Inspection Report submitted, I find the Tenant did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment is relevant to claims for damage and the Landlord has sought to keep the security deposit towards unpaid rent for October.

Based on the undisputed testimony of the Landlord, and text message submitted, I find the tenancy ended October 25, 2018 and the Tenant provided his forwarding address November 29, 2018. November 29, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from this date to repay the security deposit or claim against it. The Application was filed December 12, 2018, within the time limit for doing so. The Landlord has complied with section 38 of the *Act*.

Cleaning

I acknowledge that the tenancy agreement states that the Tenant must have the rental unit professionally cleaned at the end of the tenancy. The standard set out in the *Act* is that the Tenant must leave the rental unit reasonably clean. I find the requirement to have it professionally cleaned is an attempt to contract out of the *Act* and is of no force or effect pursuant to section 5(2) of the *Act*.

The move-out Condition Inspection Report does not support that the rental unit was not left reasonably clean for the most part. I do note that the Condition Inspection Report states that the bedrooms needed to be vacuumed. I accept this based on the Condition Inspection Report given the Tenant agreed with it and signed it.

I cannot accept that the Landlord is entitled to \$100.00 for cleaning. The Landlord testified that the cleaners cleaned the whole rental unit. The Landlord did not provide a receipt for the cleaners such that I can tell how long this took or how much they charged per hour. The Landlord seemed to be under an incorrect impression about what the Tenant was required to do.

I am satisfied the Landlord is entitled to \$25.00 for the vacuuming of the two bedrooms and award the Landlord this amount.

Utilities

Based on the undisputed testimony of the Landlord, and tenancy agreement, I accept that electricity was not included in the rent. Based on the undisputed testimony of the Landlord, I accept that the Tenant did not pay utilities for August, September or October.

I have reviewed the utilities bill submitted. It is for October 2, 2018 to October 31, 2018; however, the Landlord appears to be claiming for the amounts paid in August,

September and October rather than the amounts for these periods of time. The bill shows the October period was \$33.55 and the prior period was \$41.54.

I do not accept that the Landlord is entitled to reimbursement for \$23.59 for August utilities as I am not satisfied based on the evidence that this was for a period the Tenant was in the rental unit without seeing the bill.

Based on the undisputed testimony of the Landlord, I accept the Tenant owed \$37.94 for the September payment and \$41.54 for the October payment. The bill submitted supports the October payment.

I award the Landlord \$79.48 for unpaid utilities.

Unpaid rent

Based on the undisputed testimony of the Landlord, and tenancy agreement, I accept that the Tenant was required to pay \$2,900.00 in rent per month. Based on the undisputed testimony of the Landlord, letter submitted and 10 Day Notice, I accept that the Tenant did not pay rent for October 7th to November 6th. I accept the undisputed testimony of the Landlord that the Tenant did not have authority under the *Act* to withhold rent for this period. I find the Landlord is entitled to compensation for this and award the Landlord the \$2,900.00 requested.

I acknowledge that the Tenant vacated earlier than November 6th pursuant to the 10 Day Notice; however, I find the Landlord is entitled to the full month's rent amount given rent was due on the 7th and the Tenant was in the rental unit until the 25th.

Given the Landlord was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	BC Hydro August	-
2	BC Hydro September	\$37.94
3	BC Hydro October	\$41.54

4	Cleaning	\$25.00
5	Rent October 7 – November 6, 2018	\$2,900.00
6	Filing fee	\$100.00
	TOTAL	\$3,104.48

The Landlord is permitted to keep the security deposit pursuant to section 72(2)(b) of the *Act*. The Landlord is issued a further Monetary Order for \$1,604.48.

Conclusion

The Landlord is entitled to compensation in the amount of \$3,104.48. The Landlord is permitted to keep the security deposit. The Landlord is issued a further Monetary Order for \$1,604.48. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: April 01, 2019

Residential Tenancy Branch