



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, 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;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The owner of the tenant company (the "tenant"), the landlord, the landlord's interpreter and the landlord's counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel for the landlord testified that his assistant served the tenant with the landlord's application for dispute resolution via mail. Counsel did not know if the tenant was served via registered or regular mail or on what date the application for dispute resolution was put in the mail.

The tenant testified that she received the landlord's application for dispute resolution via mail but could not recall if it was regular or registered mail or on what date she received it.

I find that the tenant was sufficiently served with the landlord's application for dispute resolution for the purposes of this *Act*, in accordance with section 71 of the *Act*.

Issues 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 a Monetary Order for damage, pursuant to section 67; and
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 November 16, 2017 and ended on September 1, 2018. Monthly rent in the amount of \$4,000.00 was payable on the first day of each month. A security deposit of \$2000.00 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. The tenant sub-leased the subject rental property on a room by room basis to a number of sub-tenants. The tenant erected a wall on the main floor and a wall in the basement to make more rooms to sub-lease out to different tenants. The tenant installed new locks on several of the doors at the subject rental property.

Both parties agree to the following facts. The tenant provided the landlord with postdated cheques for the months of May, June and July 2018. The landlord tried to deposit the May, June and July 2018 rent cheques in September 2018, but the tenant put a stop order on the cheques. The May, June and July 2018 rent cheques were entered into evidence.

The tenant testified that she put a stop payment order on the cheques in August of 2018 and that up until that date the landlord was free to cash the cheques. The tenant

testified that it was unreasonable for the landlord not to cash the cheques at the time they were available and that she cannot be expected to keep \$12,000.00 on hand in her bank account waiting for the landlord to cash the cheques.

Counsel for the tenant submitted the following facts. The landlord's original position was that the *Act* did not have jurisdiction in this dispute because the tenant used the premises for a business purpose, thereby rendering the tenancy commercial. The landlord did not cash the rent cheques when they became available because the landlord did not wish to confirm that tenancy was ongoing and in place. To this end the landlord filed an application with the Residential Tenancy Branch which was crossed with an application of the tenant which were heard together on July 27, 2018.

The July 27, 2018 hearing resulted in a Decision dated August 21, 2018 which found that that the *Act* does have jurisdiction and that a residential tenancy was in place. Shortly after the landlord received the August 21, 2018 decision the landlord attempted to cash the May, June and July rent cheques but was unable to do so due to the stop order on the cheques. The landlord is seeking to recover \$12,000.00 for unpaid rent for the months of May, June and July of 2018. The August 21, 2018 Decision was entered into evidence.

Both parties agree that a joint move in condition inspect report was completed and signed by both parties on November 16, 2017. The move in condition inspection report was entered into evidence. A joint move out inspection and inspection report was not completed by the parties. The move in condition inspection report states that all of the doors at the subject rental property were in either good or fair condition with no specific comments about the condition of the doors.

Both parties agree to the following facts. The tenant removed the walls that were erected at the subject rental property when she moved out. The tenant also removed the new locks she installed and re-installed the old locks that were at the subject rental property when she moved in.

The landlord testified to the following facts. The original lock to one of the bedrooms did not have a deadbolt and the tenant installed one which damaged the door. Photographs of same were entered into evidence. The landlord entered into evidence a receipt in the amount of \$168.00 for the repair of the door. The landlord is seeking this amount from the tenant.

The landlord testified to the following facts. The landlord provided the tenant with four keys at the beginning of the tenancy and the tenant did not return them at the end of the tenancy. The landlord had the front door re-keyed. The landlord entered into evidence a locksmith receipt in the amount of \$296.63 and is seeking this amount from the tenant. The tenant did not dispute the landlord's testimony that the keys to the subject rental property were not returned.

The landlord testified to the following facts. When the tenant put the old locks back on the doors to the bedrooms at the subject rental property, she damaged three locks which necessitated their replacement. Photographs of damaged locks were entered into evidence. The landlord testified that she replaced the locks herself with locks she purchased. The landlord entered into evidence receipts for locks in the amount of \$54.60 and is seeking this amount from the tenant.

The tenant testified that she could not speak to the alleged damage because a joint move out condition inspection report was not completed. The tenant testified that she did her best to leave the subject rental property in good condition less minor wear and tear. The tenant testified that she did not know when the photographs of the subject rental property were taken. The landlord testified that the photographs entered into evidence were taken right after the tenant vacated the subject rental property.

The landlord testified that after the tenant moved out of the subject rental property the bathtub faucet was leaking and the constant flow of water damaged the bathtub. A photograph of a leaking bathtub faucet was entered into evidence. The landlord testified that the bathtub faucet required repair and entered into evidence a receipt from a plumber in the amount of \$56.40. The tenant testified that plumbing repairs are the responsibility of the landlord. The move in condition inspection report states that the bathtub is in good condition.

Both parties agree that the tenant installed a dryer vent in the wall of the subject rental property without the permission of the landlord. The dryer vent vented out the side of the subject rental property. The landlord testified that it cost \$609.00 to fix the wall of the subject rental property. A receipt for same was entered into evidence. The tenant testified that she was improving the property by adding the vent.

Counsel for the landlord submitted that the landlord is seeking reimbursement for the legal fees she incurred in preparation for and attendance at the July 27, 2018 hearing. A legal fee invoice in the amount of \$7,010.01 was entered into evidence.

Counsel for the landlord submitted that section 6 of the Addendum to the tenancy agreement, which was entered into evidence, states:

This property is not allowed for changing to any types of business usage/purposes, once found, terminate lease right away, owner exempt from taking any responsibility of tenant's behavior, and tenant needs to pay for all of legal costs that might arise.

Counsel for the landlord submitted that the legal fees incurred by the landlord arose because the tenant was conducting a business, contrary to section 6 of the addendum; therefore, the tenant is responsible for the landlord's legal fees.

The tenant testified that the August 21, 2018 Decision found that she was permitted to sub-lease the subject rental property under the tenancy agreement and so she was not operating a business and should not be responsible for the landlord's legal fees.

Analysis

Rent

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 \$4,000.00 on the first day of each month from May to July 2018. While the tenant did provide the landlord with postdated cheques which the landlord elected not to deposit immediately, the tenant put a stop order on the cheques, thereby preventing the landlord from receiving the tenant's rent money. While the landlord should have cashed the tenant's cheques in the month for which they were issued, I find that the landlord's delay in cashing the cheques does not release the tenant of her obligation under section 26(1) of the *Act* to pay rent to the landlord.

Pursuant to section 67 of the *Act*, I find that the tenant is obligated to pay the landlord \$12,000.00 in unpaid rent for the months of May to July 2018.

Damages

Policy Guideline 16 states that 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.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

The landlord testified that one of the bedroom doors was damaged by the tenant when a dead bolt lock was installed and three bedroom door locks were damaged by the tenant when they were removed and reinstalled. The move in condition inspection report stated that the doors in the subject rental property were in fair condition. The tenant confirmed that she altered the locks at the subject rental property.

Based on the move in condition inspection report, I find that the doors in the bedrooms were in fair condition. I accept the landlord's testimony that the photographs were taken immediately after the tenant moved out and are an accurate representation of the subject rental property at the time of move out. I find that the landlord has proved on a balance of probabilities that the bedroom door was damaged by the tenant and required

repair. I find that the landlord has proved, on a balance of probabilities, that three door locks were damaged by the tenant and required replacement. I find that the tenant is required to reimburse the landlord for the door repair in the amount of \$168.00 and the cost of the lock replacement in the amount of \$69.25.

As the tenant did not dispute the landlord's testimony that the keys to the subject rental property were not returned, I accept the landlord's testimony that the tenant did not return the keys. As the tenant did not return the keys, I find that the tenant is required to reimburse the landlord for the cost of re-keying the subject rental property in the amount of \$296.63.

As both parties agreed that the tenant installed a dryer vent without the landlord's permission, I find that the landlord is entitled to recover the cost of the repair of the vent whole in the subject rental property in the amount of \$609.00.

The landlord testified that the tub faucet leaked after the tenant vacated the subject rental property as a result of the actions of the tenant. The tenant testified that the maintenance of the plumbing was the landlord's responsibility. I find that the landlord has failed to prove that the leaking tub faucet was the result of the tenant's action or inaction rather than reasonable wear and tear. I therefore dismiss the landlord's claim for the plumbing repair in the amount of \$54.60.

Legal Fees

I find that there is nothing in the *Act* which provides me with the authority to compensate a party for legal fees incurred in the preparation for or attendance at a dispute resolution hearing.

Section 5 of the *Act* states that landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

While the addendum to the tenancy agreement states that in certain circumstances the landlord is entitled to recover legal fees from the tenant, I find that the operation of section 5 of the *Act* prohibits me from awarding damages under this term as it seeks to provide a remedy not available under the *Act*. I therefore dismiss the landlord's claim for legal fees.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Rent- May to July 2018	\$12,000.00
Door repair	\$168.00
Lock replacement	\$69.25
Re-keying	\$269.63
Vent hole repair	\$609.00
Filing Fee	\$100.00
TOTAL	\$13,215.88

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: April 08, 2019

Residential Tenancy Branch