



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL-S MNRL-S

Introduction

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

- A monetary order for damages to the rental unit and for unpaid rent pursuant to section 62;
- Authorization to retain a security deposit pursuant to sections 38;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the landlord and the tenant attended the hearing. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. I find the tenant served in accordance with sections 89 and 90 of the *Act*.

Preliminary Issues

- Tenant's evidence

The landlord denies receiving the tenant's evidence. The tenant's witness testified she served the tenant's evidence upon the landlord by personally delivering it to a lady who was outside the front porch of the 'house' April 14, 2019. The tenant's witness testified there are three units to the house and she does not know which unit the landlord lives in. The tenant's witness did not ask the lady whether she knew the landlord when delivering the evidence. She testified the lady read the material and said, "OK fine" and the witness made no further inquiries of her.

Rules of Procedure 3.15 require the respondent's evidence to be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Rule 3.16 requires the respondent to be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with evidence as required by the *Act* and these Rules of Procedure.

Section 88(e) of the *Act* allows for a person to be served by leaving documents at a person's residence with an adult who apparently resides with the person. I am not satisfied that the lady who received the evidence resides with the landlord and will not consider the tenant's documentary evidence.

- Tenant's participation in the hearing

I gave my ruling to exclude the tenant's documentary evidence at 1:51 p.m. At 1:52 p.m. the tenant advised me she will seek a review of this decision and hung up. In accordance with Rule 7.3, the hearing with the landlord continued in the absence of the tenant. As the tenant hung up the phone before giving her oral testimony, only limited evidence was presented by the tenant.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for damages to the rental unit and for unpaid rent?
- Authorization to retain the security deposit?
- Authorization to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided a copy of the tenancy agreement. The month to month tenancy agreement was signed on February 6, 2018 with a commencement date of February 15, 2018. Rent in the amount of \$975.00 was due on the 15th of each month. A security deposit in the amount of \$482.50 was collected and the landlord still retains it. No pet damage deposit was collected. The landlord did not offer the tenant an opportunity to participate in a condition inspection at the commencement of the tenancy.

The landlord provided the following testimony. Rent was last paid on September 15th. On November 2, 2018, the landlord served the tenant with a 10 Day Notice to End tenancy for unpaid rent ("Notice") indicating unpaid rent in the amount of \$975.00 due on November 1, 2018. The effective (move-out) date on the Notice was November 12, 2018. The landlord testified there was an error on the Notice, as it stated rent was due on the 1st of the month but when it was served, the tenant was already two weeks in arrears as October's rent was due on the 15th of October; November rent was due November 15th.

There was an altercation on November 4, 2018 whereby the tenant was removed from the rental unit by the police, ending the tenancy. Following the tenancy end date, agreed to be November 4, 2018 at the previous hearing, the tenant filed for a dispute resolution hearing which was dismissed with leave to reapply. The previous arbitration case number is listed on the cover page of this decision

The landlord testified the police advised him not to have contact with the tenant following the incident on November 4th. He has not had contact with her for the past three months, except to take part in a previous arbitration hearing. In the previous decision, the tenant acknowledged she recovered her personal property following the end of the tenancy on November 4th.

After the tenant left, the landlord discovered a large hole in the wall that the tenant had previously tried to repair. A photo of the damage was provided by the landlord. The landlord had the hole professionally repaired and provided an invoice from a drywalling company in the amount of \$488.25 including GST which he paid in full.

Analysis

- Unpaid rent

Section 26 of the *Act* states 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 landlord has provided undisputed evidence that the tenancy ended on November 4, 2018 and the tenant did not pay rent from October 15, 2018 to November 4, 2018. The tenant did not have a right to deduct all or a portion of the rent during the tenancy. I find the landlord is entitled to compensation for one month's rent in accordance with section 67 of the *Act*, in the amount of \$975.00.

- Damaged wall

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage.

I am satisfied on the landlord's evidence that the tenant damaged the rental unit by making a hole in the wall. I am equally satisfied the landlord paid a total of \$488.25 to fix the damage to the wall caused by the tenant. In accordance with section 67, I award compensation to the landlord in the amount of \$488.25.

- Return of Security Deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

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*.

I find the landlord's right to claim against the security deposit was extinguished when he failed to offer the tenant the opportunity to mutually conduct a condition inspection report at the beginning of the tenancy. In this case, section 38(6) requires that the tenant's security deposit of \$482.50 be doubled to \$950.00.

The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$950.00 in partial satisfaction of the monetary order.

As the landlord was successful in his claim, the filing fee for his application is awarded.

Item	Amount
October 15 – November 15 rent	\$950.00
Damaged wall compensation	\$488.25
Filing fee	\$100.00
Less security deposit (doubled)	(\$950.00)
Monetary Award	\$588.25

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$588.25**. 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 25, 2019

Residential Tenancy Branch