



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 24, 2018 (the “Application”). The Landlord sought compensation for damage to the rental unit, to recover unpaid rent and to keep the security deposit.

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

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 Representative testified that the hearing package and evidence were sent by registered mail on December 28, 2018 to the last known address for the Tenant. He said the package was delivered to the Tenant’s new address and then refused. He provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was redirected to the recipient’s new address on December 28, 2018 and refused by the recipient January 22, 2019.

I accept the undisputed testimony of the Representative regarding service. I do not find that the Tenant was served in accordance with sections 88 or 89 of the *Residential Tenancy Act* (the “Act”) as the package was sent to the Tenant’s last known address and not current residence or forwarding address provided by the Tenant. However, pursuant to section 71(2)(c) of the *Act*, I find the package was sufficiently served for the purposes of the *Act* given the Canada Post website information showing the package was redirected to the Tenant’s new address. I acknowledge that the Tenant refused the package. However, parties are not permitted to avoid service by refusing registered

mail sent to them. I also note the package was sent in sufficient time prior to the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and Representative were 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 damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?

Background and Evidence

The Landlord sought compensation in the amount of \$1,755.00 being \$1,305.00 for cleaning and repairs and \$450.00 for unpaid rent.

A written tenancy agreement was submitted as evidence. The tenancy started June 01, 2016 and was a month-to-month tenancy. Rent was \$900.00 per month due on the first day of each month. The Tenant paid a \$450.00 security deposit. The agreement was signed by the parties.

The Landlord and Representative testified as follows.

The tenancy ended December 10, 2018. The Tenant did not provide a forwarding address in writing.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all the deposit.

A move-in inspection was done in 2016 but no report was completed. The Tenant was not provided two opportunities to do a move-in inspection.

The Tenant vacated the rental unit at night without telling the Landlord. There was no chance to do a move-out inspection because the Tenant had left. The Landlord did not do a move-out Condition Inspection Report but took photos immediately without touching anything.

Unpaid rent \$450.00

The Tenant did not pay \$450.00 of December rent. The Tenant agreed to vacate the rental unit half way through December. He did not pay rent for December. He had no authority under the *Act* to withhold rent.

Cleaning \$780.00

The Tenant left the rental unit dirty. Nothing had been cleaned. The Landlord and Representative cleaned the rental unit themselves which took a week. It would have cost more to use a cleaning company. There was garbage left in the rental unit. It looked like the downstairs had not been cleaned in a year. The toilets were left dirty. The oven had to be cleaned three times. The rental unit is a house with three bedrooms upstairs and one downstairs.

The Landlord relied on photos submitted to show the rental unit was dirty on move-out.

Repairs \$525.00

Items in the rental unit were broken and had to be repaired. Some of the kitchen drawers were broken. The washing machine and oven were broken. Curtains were ripped apart and had to be replaced. Handles on doors were broken off. A drain was clogged and not working. The fridge handle was missing.

I told the Landlord and Representative that they had to point to the photos they were relying on for these issues as I could not tell from the photos what the issues were.

The Representative pointed to the following photos. Page 18 showing items left behind by the Tenant. The basement photos showing how dirty the floor was, that wood was left behind and that the furnace was not cleaned. Page 15 showing wood debris everywhere. Page 24 showing the bathroom in the basement and that the toilet bowl was not cleaned out and there were dead flies everywhere. Page 4 showing a broken handle on a kitchen drawer. Page 17 of the living room showing garbage bags left laying around, a plastic tarp and paint left behind. Page 20 showing the ripped curtains.

The Landlord submitted the following table:

Date	Cleaning	Repairs
Dec. 11	10	
Dec. 12	10	
Dec. 13	4	7.5
Dec. 14	2	7.5
Total hours	26 x 30 Dollars	15 x 35 Dollars

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.

Based on the undisputed testimony of the Landlord and Representative, I find the Tenant was not provided two opportunities to do a move-in or move-out inspection and therefore find he did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the undisputed testimony of the Landlord and Representative, I find the Landlord did extinguish her right to claim against the security deposit for damage to the rental unit by failing to complete a move-in Condition Inspection Report. However, the Landlord has claimed the full amount of the deposit for unpaid rent and therefore extinguishment does not affect the outcome.

I accept the undisputed testimony of the Landlord and Representative that the tenancy ended December 10, 2018. I also accept that the Tenant did not provide a forwarding address in writing. Given this, section 38(1) of the *Act* has not been triggered and the Landlord has complied with section 38 of the *Act*.

Unpaid rent

Based on the undisputed testimony of the Landlord and Representative, and tenancy agreement submitted, I accept that the Tenant was required to pay \$900.00 in rent per month by the first day of each month. I accept the undisputed testimony of the Landlord and Representative that the Tenant agreed to vacate the rental unit half way through December and did vacate December 10, 2018. I accept the undisputed testimony of the Landlord and Representative that the Tenant did not pay rent for December. I note that the Landlord submitted a 10 Day Notice for \$450.00 in unpaid rent due December 01, 2018 with an effective date of December 10, 2018. I accept the undisputed testimony of the Landlord and Representative that the Tenant did not have authority under the *Act* to withhold rent.

I find the Landlord is entitled to recover rent for the period the Tenant occupied the rental unit in December which I understand from the evidence to be from December 01 to December 10, 2018. I calculate this to be \$290.32 and award the Landlord this amount.

Cleaning \$780.00

I accept the undisputed testimony of the Landlord and Representative about the state of the rental unit upon move-out. The photos support that the rental unit was left dirty. I find the Tenant breached section 37 of the *Act* by failing to leave the rental unit reasonably clean.

I accept the undisputed testimony of the Landlord and Representative that they had to clean the rental unit. Again, this is supported by the photos.

I also accept that it took 26 hours to clean the rental unit given the undisputed testimony about the state of the rental unit, the photos and the size of the rental unit. The Landlord is claiming \$30.00 per hour for the cleaning which I find to be within the reasonable range for cleaning costs. The Tenant did not appear at the hearing to dispute the amount claimed.

I accept the Landlord minimized her loss by cleaning the rental unit herself and not hiring a company to clean it.

I find the Landlord is entitled to compensation for the cleaning costs and award the Landlord the \$780.00 claimed.

Repairs \$525.00

The Landlord and Representative testified about items that were broken and needed repair throughout the rental unit. I have looked through the photos and can only confirm that a handle on a drawer in the kitchen was broken and curtains were ripped. I do not find that the photos show further broken or ruined items.

The Landlord did not do a Condition Inspection Report at the start of the tenancy such that I can determine the condition of the rental unit on move-in. Nor did the Landlord provide photos or other documentary evidence of the state of the rental unit upon move-in.

Nor did the Landlord do a move-out Condition Inspection Report which could confirm that further items in the rental unit were broken and needed repair. Nor has the Landlord provided further documentary evidence to show items in the rental unit, other than the drawer handle and curtain, were broken or ruined.

I am not satisfied based on the evidence provided that the Tenant caused damage that was beyond reasonable wear and tear given the lack of evidence of the state of the rental unit upon move-in. Nor am I satisfied that all the items claimed for were in fact ruined or broken in the absence of further evidence to support this as I find such evidence would have been simple to provide. I acknowledge that the Landlord and Representative provided undisputed testimony on these issues. However, I would expect at least some evidence to support the claim that further items were ruined or broken such as a move-out Condition Inspection Report which the Landlord was required under the *Act* to complete. Given the issues outlined, I am not satisfied the Landlord is entitled to compensation for repairs to the rental unit.

In total, the Landlord is entitled to compensation in the amount of \$1,070.32. The Landlord can keep the \$450.00 security deposit towards this amount pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$620.32.

Conclusion

The Landlord is entitled to compensation in the amount of \$1,070.32. The Landlord is permitted to keep the security deposit. The Landlord is issued a further Monetary Order for \$620.32. 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: May 08, 2019

Residential Tenancy Branch