



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing originally convened on April 9, 2019 and was adjourned to May 27, 2019 due to service issues. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. 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.

In an Interim Decision dated April 9, 2019 I Ordered the landlord to re-serve her application for dispute resolution and evidence package on the tenant.

The landlord testified that she re-served her evidence and application for dispute resolution on the tenant on April 15, 2019 via registered mail. The tracking numbers to confirm this registered mailing were entered into evidence. I find that the tenants were deemed served with the landlord's application and evidence packages on April 20,

2019, five days after their mailing, in accordance with section 89 and 90 of the *Act* and pursuant to my Interim Decision dated April 9, 2019.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began on March 4, 2018 and ended on November 20, 2018 when a bailiff attended at the subject rental property. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenants provided their forwarding address to the landlord on December 8, 2018 via e-mail. The landlord filed this application for dispute resolution on December 17, 2018.

The landlord provided the following undisputed testimony. A joint move in inspection and inspection report was completed on March 3, 2018. The landlord e-mailed the tenant on numerous occasions requesting the tenants to attend at the subject rental property to complete a move out condition inspection report but the tenants ignored the landlord's e-mails. The landlord provided the tenants with the Residential Tenancy Branch Notice of Final Inspection and the tenants continued to ignore this final written

request. The landlord completed the move out condition inspection report alone on November 20, 2018.

The landlord is seeking to recover the following damages arising out of this tenancy:

Item	Amount
Bailiff fee	\$434.91
Court Registry fee	\$120.00
Courier fee	\$36.00
Lock change fee	\$149.12
Carpet cleaning fee	\$151.00
Garbage removal fee	\$500.00
Cleaning fee	\$200.00
Bathroom repairs	\$100.00
Filing fee	\$100.00
Total	\$1,791.03

The landlord testified that in a previous decision from the Residential Tenancy Branch, she was awarded an Order of Possession against the tenants which she had to enforce with a bailiff. The landlord cited the file number for the previous arbitration and the Decision dated November 5, 2018 confirms the landlord's above testimony. The landlord testified that the bailiff cost \$434.91 and entered a receipt for same into evidence.

The Decision dated November 5, 2018 also found that the landlord was entitled to retain \$100.00 from the tenants' security deposit.

The landlord testified that she had to pay court registry costs in the amount of \$120.00 to obtain the Writ of Possession and is seeking this cost to be recovered from the tenants. A receipt for same was entered into evidence. The landlord testified that she incurred courier costs to send the writ of possession and keys to the nearest bailiff's office, which was in a different city, in the amount of \$36.00. A receipt for same was not entered into evidence.

The landlord testified that the tenants did not return any of the keys to the subject rental property and so she changed the locks. A receipt for \$149.12 for same was entered into evidence.

The landlord testified that the subject rental property was left dirty and the subject rental property and the carpets required cleaning. The landlord entered into evidence photographs of dirty walls. The move in condition inspection report states that the subject rental property and carpets are clean and in good condition. The move out condition inspection report states that the carpets and numerous areas in the subject rental property were dirty. The landlord testified that she hired a carpet cleaning company which cost \$151.00. A receipt for same was entered into evidence. The landlord testified that she spent five hours cleaning the subject rental property and is seeking reimbursement for her time at a rate of \$40.00 per hour as that is what she makes at her profession.

The landlord testified that the tenants left a large amount of garbage at the subject rental property that needs to be hauled to the dump. The landlord testified that she hired two young people at rate of \$200.00 to haul the mattresses left by the tenants to the dump plus the dump fees of approximately \$50.00. No receipts for same were entered into evidence. The landlord testified that a number of items still need to be hauled to the dump. Photographs of same were entered into evidence. The landlord is seeking \$500.00 for the incurred and projected costs of hauling the garbage to the dump.

The landlord testified that the tenants damaged the drywall in the bathroom which had to be patched and repaired. The landlord testified that spent three hours repairing the bathroom. No receipts for products used to make the repairs were entered into evidence. The move in condition inspection report states that the walls in the bathroom were in good condition. The move out condition inspection report states that the walls in the bathroom were damaged.

Analysis

Monetary Claim

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(1) of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

I find that the tenant did not vacate the subject rental property in accordance with the Order of Possession dated November 5, 2018 thereby breaching section 37(1) of the *Act*. I therefore find that the landlord is entitled to recover the cost of the bailiff fee in the amount of \$434.91 and the court registry fee in the amount of \$120.00 as these are expenses which resulted from the tenants' breach of section 37(1) of the *Act*.

I find that the landlord is not entitled to recover the cost of the courier as the landlord failed to provide a receipt for the above charge and has therefore failed to prove the amount of or value of that loss.

Section 37(2)(a) 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.

Based on the photographic evidence of the landlord, the landlord's testimony and the move in and move out inspection reports, I find that the rental unit and carpets required cleaning. I therefore find that the landlord is entitled to recover the cost of the carpet cleaning in the amount of \$151.00. I find that the landlord is entitled to monetary compensation for hours spent cleaning the subject rental property. I find that the landlord is not entitled to recover her professional hourly wage as she could have incurred a lesser expense by hiring a cleaner. I find that a reasonable hourly wage for cleaning to be \$25.00 per hour. I find that the landlord is entitled to recover \$125.00 for her labour cleaning the subject rental property.

Based on the photographic evidence of the landlord, the landlord's testimony and the move in and move out inspection reports, I find that the tenants left a large amount of garbage at the subject rental property in breach of section 37(2)(a) of the *Act*. I find that the landlord has suffered damages as a result of this breach; however, I find that the landlord has failed to prove the quantification of her damages.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that while the

landlord has failed to prove the quantification of her damages, she has suffered a loss and is entitled to \$300.00 in nominal damages.

Based on the photographic evidence of the landlord, the landlord's testimony and the move in and move out inspection reports, I find that the tenants damaged the walls in the bathroom of the subject rental property in breach of section 37(2)(a) of the *Act*. I find that the landlord has suffered damages as a result of this breach; however, I find that the landlord has failed to prove the quantification of her damages.

I find that while the landlord has failed to prove the quantification of her damages, I accept her testimony that she spent three hours repairing the bathroom. I find that the landlord is entitled to recover \$25.00 per hour for the three hours she spent repairing the bathroom, in the amount of \$75.00.

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must 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.

Based on the landlord's testimony I find that the tenants did not return the keys to the subject rental property thereby breaching section 37(2)(b) of the *Act*. I find that the failure of the tenants to return the keys necessitated the landlord to change the locks. I therefore find that the landlord is entitled to recover the cost of changing the locks in the amount of \$149.12 as this expense resulted from the tenants' breach of section 37(2)(b) of the *Act*.

As the landlord was successful in her claim, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Security Deposit

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.

Section 36 of the *Act* states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b)the tenant has not participated on either occasion.

Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the “Regulations”), the second opportunity must be in writing.

Based on the testimony of the landlord, I find that the landlord provided the tenant with two opportunities to complete the move out inspection report, the last of which was in writing, pursuant to section 17 of the *Regulations*. I find that the tenants did not attend on any occasion. Pursuant to section 36 of the *Act*, I find that the tenants right to the return of their security deposit is extinguished.

Section 38 of the *Act* states that within 15 days after the later of:

- (a)the date the tenancy ends, and
 - (b)the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

While providing a forwarding address via e-mail is not an accepted method of service under the *Act*, I find that since the landlord testified that she received the tenants’ forwarding address on December 8, 2018, I find that the tenants’ forwarding address was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* on that date. The landlord applied to retain the tenants’ security deposit on December 17, 2018. I find that the landlord’s application for dispute resolution was made in accordance with section 38 of the *Act*. I find that the landlord is entitled retain the \$700.00 remaining of the tenants’ security deposit in partial satisfaction of her monetary claim against the tenants.

Conclusion

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

Item	Amount
Bailiff fee	\$434.91
Court Registry fee	\$120.00
Lock change fee	\$149.12
Carpet cleaning fee	\$151.00
Garbage removal fee	\$300.00
Cleaning fee	\$125.00
Bathroom repairs	\$75.00
Filing fee	\$100.00
Sub Total	\$1,455.03
Less remaining security deposit	-\$700.00
Total	\$755.03

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: May 29, 2019

Residential Tenancy Branch