



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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,405.41 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and tenant JR attended the hearing. Tenant JR appeared as representative for tenant TT as well. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were served the notice of dispute resolution form and supporting evidence package via registered mail on April 20, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. Tenant JR testified that she did not receive this package. However, a consultation of the Canada Post tracking information shows that the package was delivered to the address provided by tenant JR, but was not retrieved. I find that the tenants are deemed served with this package on April 25, 2019, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

The tenants submitted no documentary evidence.

Issues to be Decided

Is the landlord entitled to:

- 1) A monetary order in the amount of \$2,405.41?
- 2) Retain the security deposit in partial satisfaction of this amount?
- 3) Recover her filing fees from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 15, 2019. Monthly rent is \$950.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$475.00. The tenancy agreement required that the tenants pay a pet damage deposit as well, but the parties agree that the tenant did not provide one. The landlord still retains the security deposit.

The landlord testified that she originally intended for the tenancy to start on January 1, 2019, but that the tenants were insistent on moving in before Christmas. The landlord was hesitant, as the rental unit needed some repairs (the specifics of which were not discussed at the hearing) and the interior needed repainting. The landlord testified that the tenants agreed to paint the interior themselves by January 1, 2019. The landlord testified that she and the tenants agreed that the move-in inspection report would be completed after the tenants had painted the interior of the rental unit. She testified that the tenants never completed the painting, and the move-in inspection was never completed as a result.

Tenant JR testified that she and tenant TT agreed to repaint the interior, but did not agree for the move-in inspection to be delayed, or that they would complete the painting by January 1, 2019.

The tenancy was strained from the outset. The landlord testified that the tenants had additional guests living with them (which she testified was prohibited by the tenancy agreement), and the tenants were parking too many vehicle in and around the rental property (the tenancy agreement permitted two vehicles, she testified, but the tenants parked at least three). The landlord testified that the tenants' vehicles caused deep ruts in the shoulder of the road, which the landlord testified she is responsible for

maintaining. The landlord testified that the shoulder is not part of the rental property, but rather owned by the municipality. The landlord produced no documentary evidence that she is responsible for maintaining the shoulder.

These alleged breaches led the landlord to, at some point in February 2019, issue a One Month Notice to End the Tenancy, with an effective date of March 31, 2019. The tenants did not dispute this Notice.

The tenants vacated the rental property on March 31, 2019. The landlord testified that, on April 3, 2019, tenant JR attended the rental property, entered the rental unit, and removed an armful of items from the rental unit. The landlord testified that she had not consented to the tenant returning to the property. Tenant JR testified that she was retrieving cleaning products which belonged to her from the rental unit. Tenant JR did not return the rental unit keys on April 3, 2019, as, in her own words, she “forgot”. Tenant JR testified, and the landlord agreed, that she returned the rental unit keys on April 7, 2019.

The landlord testified, and tenant JR agreed, that the tenants failed to pay \$238.00 of the March monthly rent. Additionally, the landlord testified, and tenant JR did not dispute, that the tenants failed to pay \$303.00, representing their half of utilities for February and March 2019.

The landlord testified, and tenant JR did not dispute, that the rental unit was left in a condition which required significant cleaning. Garbage was left throughout the rental unit (including used tampons and condoms), as was a Christmas tree and a couch. Rotten food was left in the refrigerator, and the freezer was dirty. Dirt and food residue were on the floor and the oven was dirty. The cupboards were not cleaned and a “mess of paint supplies” was left behind.

The landlord testified that she incurred cleaning costs as follows:

Cleaning Costs	
Dump fees (garbage and couch)	\$34.00
Hire cleaner for 12 hours	\$350.00
Trip to dump (landlord's time @ \$25.00/hour)	\$50.00
Gas for drive to dump (2 trips)	\$20.00
Cleaning supplies	\$75.00
Total	\$529.00

Tenant JR did not dispute any of these costs.

The landlord also testified that she incurred costs repairing the damage to the road shoulder (discussed above) caused by the tenants' vehicles, as follows:

Rut Repair Costs	
Landlord's time to purchase gravel (@ \$25.00/hour)	\$25.00
Gas for trip to buy gravel	\$10.00
Cost of gravel	\$33.60
Hire worker to unload gravel and repair rut (2 hours)	\$75.00
Total	\$143.60

The tenant did not dispute any of these expenses.

The landlord also testified that she needed to purchase new keys and a lock for the gate outside the rental property which grants access to the rental unit, and had to have new keys cuts for the rental unit itself, as the tenant did not return the keys until April 7, 2019. The landlord testified that she purchased the new keys and locks on April 3, 2019, after tenant JR entered the rental unit after the tenancy had ended, without the landlord's permission. The cost of replacing the keys and locks claimed by the landlord is \$54.81, plus one hour of the landlord's time (at \$25.00) to install the door lock (for a total of \$79.81).

The landlord claims damages for unpaid rent for the month of April 2019, on the basis that by not returning the keys until April 7, 2019, the tenants maintained possession of the rental unit for the month of April.

The landlord also claims compensation in the amount of \$94.23 for the purchase of paper, printer ink and USB sticks that she testified were necessary for her to prepare this application.

In total, the tenant is claims for compensation in the amount of \$2,347.64 as follows:

March 2019 arrears	\$238.00
April 2019 arrears	\$950.00
Cleaning Costs	\$539.00
Rut Repair Costs	\$143.60
Utilities	\$303.00
Locks and Keys	\$79.81
Office Supplies	\$94.23
Total	\$2,347.64

This total differs slightly from the amount claimed by the landlord on the application for dispute resolution. Based on my review of the documentary evidence and understanding of the parties' testimony, I cannot account for the discrepancy.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

I will address each of the portions of the landlord's claim for damages in turn.

March Rent

The tenants did not dispute that March 2019 rent is owed in the amount of \$238.00. Section 26 of the Act requires that a tenant pay rent when it is due. I find that the

tenants have failed to do this, and as such, the landlord has suffered a loss of an equal amount. Accordingly, I order that the tenants pay the landlord \$238.00.

April Rent

I find that the tenancy ended on March 31, 2019, per the One Month Notice to End Tenancy issued by the landlord. As such, no rent is due for the month of April. However, Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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, and

(b) 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.

I find that the rental unit was not left reasonably clean at the end of the tenancy. Likewise, I find that the tenants failed to return the keys at the end of the tenancy and that they instead returned the keys on April 7, 2019. I find that each of these constitutes a breach of the Act. I find that the landlord suffered loss as a result of these breaches in that she was not able to rent out the rental unit for the month of April to another prospective tenant. I find that the landlord acted promptly to minimize her losses, by replacing the locks, having new keys cut, and cleaning the rental unit. I find that tenants' breach of the Act caused the landlord damage in the amount equal to one month's rent (\$950.00).

Accordingly, I order that the tenants pay the landlord \$950.00.

Cleaning Costs

As stated above, I find that the tenants breached the Act by failing to leave the rental unit reasonably clean at the end of the tenancy. I accept the landlord's evidence that she incurred costs of \$539.00 in supplies and labour to clean the rental unit and dispose of the garbage and other items left by the tenants. I find that the landlord adequately minimized her loss in so doing.

Accordingly, I order that the tenants pay the landlord \$539.00.

Rut Repair

The landlord testified that shoulder of the road does not form part of the rental property, and is, in fact, not owned by her. Rather, it is owned by the municipality. There is no documentary evidence before me which suggests that the landlord is responsible for maintaining the shoulder of the road in question, or that she is entitled to restrict access to the shoulder. As such, I cannot find that the tenants breached the tenancy agreement or the Act by parking on it. In any event, upon review of the photographs provided by the landlord, I find that the damage caused to the shoulder is minimal, and appears to be the result of ordinary wear and tear. Accordingly, I decline to award any amount of compensation to the landlord for expenses she has incurred in repairing the ruts on the shoulder of the road.

Utilities

It is a term of the tenancy agreement that the tenants pay 50% of the utilities. The landlord alleges that the tenants failed to pay 50% of the final utility bill. Tenant JR did not dispute this. As such, I find that the tenants are obligated to pay 50% of the utilities, per the tenancy agreement, and that they failed to do so. As such, they caused the landlord to incur damages in the amount of \$303.00. Accordingly, I order that the tenants pay the landlord \$303.00.

Keys and Locks

As stated above, section 37 of the Act requires the tenants to return the keys to the landlord at the end of the tenancy. I find that the tenants failed to do this, instead returning them on April 7, 2019. I find that this constitutes a breach of the Act. As a result of this breach, I find that the landlord incurred damages of \$79.81, as set out above. I find that it was reasonable for the landlord to have incurred these expenses prior to April 7, 2019, as tenant JR had demonstrated a willingness to use the keys to enter the rental unit after the tenancy had ended. I find that the landlord could not have known if the tenants intended to return their copies of the keys, or use the keys to regain access to the rental unit again. Accordingly, I order that the tenants pay the landlord \$79.81.

Office Supplies

There is no basis in the Act which permits a party to recover the costs of office supplies purchased for the purposes of commencing or carrying on an application for dispute resolution. Section 72 of the Act provides for the reimbursement of the filing fee incurred by a party applying for dispute resolution. It does not extend to the reimbursement of consumables or disbursement. Accordingly, I decline to order the tenants to reimburse the landlord any amount for the cost of office supplies.

Move-In Condition Inspection Report

The landlord testified that she did not complete a condition inspection report. The completion of such a report is required by the Section 23(4) of the Act, which states:

Condition inspection: start of tenancy or new pet

(4)The landlord must complete a condition inspection report in accordance with the regulations.

She testified that this was due to an agreement with the tenants that an inspection would be done once the rental unit interior was painted. Tenant JR denied such an agreement existed. The landlord offered no corroborating evidence that such an agreement existed. Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, I find that the landlord has the burden to show that such an agreement to delay conducting the move-in inspection (which would amount to an explicit waiver by the tenants). Based on the evidence before me, I find, on a balance of probabilities, that such an agreement was not entered into.

Section 24(2) of the Act states:

Consequences for tenant and landlord if report requirements not met

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with section 24(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report.

Residential Tenancy Policy Guideline 17 states:

C3. 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;
[...]
- whether or not the landlord may have a valid monetary claim.

The tenants have not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the security deposit is extinguished (discussed above) the tenant is entitled to receive double the security deposit from the landlord.

Accordingly, I order that the landlord pay the tenant \$950.00, representing double the security deposit.

Notwithstanding this extinguishment, the landlord retains the right to make a monetary claim, as per Policy Guideline 17:

B9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

[...]

- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and

- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As the landlord has been partially successful in their application, I order that the tenants reimburse her half of her filing fee (\$50.00).

Pursuant to section 72(2), I order that the landlord may apply the security deposit against the preceding monetary orders.

In total, I order that the tenants pay the landlord \$734.81, representing the following:

March 2019 arrears	\$238.00
Loss of April 2019 rent	\$950.00
Cleaning Costs	\$539.00
Rut Repair Costs	\$0.00
Utilities	\$303.00
Locks and Keys	\$79.81
Office Supplies	\$0.00
Filing Fee	\$50.00
Security deposit credit	-\$475.00
Payment of double security deposit	-\$950.00
Total	\$734.81

Conclusion

Pursuant to section 72 of the Act, I order that the landlord may retain the security deposit in partial satisfaction of the damages incurred as the result of the tenants' breaches the Act or tenancy agreement.

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$734.81.

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 22, 2019

Residential Tenancy Branch