



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL-S, 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;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenant with his application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Tenant's Evidence

The tenant testified that he did not serve the landlord with his evidence package.

Section 3.15 of the *Residential Tenancy Branch Rules of Procedure* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, I find that since the landlord did not receive a copy of the tenant's evidence, the tenant's evidence is excluded from this proceeding.

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 retain the tenant's security deposit, pursuant to section 38 of the *Act*?
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 September 1, 2018 and ended on March 1, 2019. This was originally a fixed term tenancy set to end on August 31, 2019. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 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. The landlord applied for dispute resolution on March 14, 2019.

Both parties agreed to the following facts. The tenant provided the landlord with his forwarding address via text on March 2, 2019. A joint move in condition inspection report was completed by both parties on September 1, 2018 and was entered into evidence. The landlord provided the tenant with two opportunities to complete the move out condition inspection report and provided the tenant with a final opportunity for inspection via email on March 6, 2019. In an e-mail dated March 6, 2019 the tenant authorized the landlord to complete the move out condition inspection report without him on March 7, 2019. The landlord completed the move out condition inspection report alone on March 7, 2019. The move in and move out condition inspection reports were entered into evidence.

The landlord testified that on February 27, 2019 he received a call from concierge who informed him that his tenant was moving out of the subject rental property and had not reserved an elevator. The landlord testified that prior to February 27, 2019 he had no notice from the tenant that the tenant intended on moving out of the subject rental property.

The tenant testified that he told the landlord via telephone, approximately two weeks prior to moving out, that he intended on vacating the subject rental property for March 1, 2019.

The landlord testified that the tenant's failure to provide proper notice cost him one month's rent in the amount of \$1,300.00 which he is seeking from the tenant. The landlord testified that he was able to rent the subject rental property out for April 1, 2019.

The tenant testified that in October of 2018 the landlord, in an e-mail, told him that he could move out of the subject rental property at any time without penalty. The tenant testified that he is therefore not responsible for the loss of rent incurred by the landlord. The October 2019 e-mail not accepted into evidence.

The landlord testified that he told the tenant in October of 2018 that if the tenant provided him with one month's notice he could break the fixed term lease without penalty; however, the tenant did not provide him with notice.

The landlord testified that the subject rental property was approximately 8-9 years old when the tenant moved in and was in good condition. The landlord is seeking the following damages arising out of this tenancy:

Item	Amount
Purchase and replacement and disposal of broken	\$310.00

laundry room door	
Purchase and replacement and disposal of broken bathroom door	\$250.00
Repair of living room wall	\$200.00
Re-installation of sun room doors	\$75.00
Repair and installation of kitchen fixture	\$75.00
Repair of broken tile	\$75.00
Replace broken light switches	\$50.00
Replace mailbox key	\$50.00
Cleaning	\$175.00
Filing Fee	\$100.00
TOTAL	\$1,360.00

Both parties agree that the laundry room door was in good condition when the tenant moved into the subject rental property. The landlord entered into evidence a photograph showing holes in the laundry room doors. The tenant testified that his girlfriend was electrocuted by a faulty washer/dryer and was thrown into the door which caused the holes. The tenant testified that if the landlord had repaired the washer/dryer the damage to the laundry room door would not have occurred. The landlord testified that he had the doors replaced and that the cost of the new doors, disposal of the old doors and installation of the new doors was \$310.00. No receipts or quotes were entered into evidence.

Both parties agree that the bathroom door was in good condition when the tenant moved into the subject rental property and had a hole in the bottom when the tenant moved out. The tenant acknowledged that he caused the damage to the bathroom door. The landlord testified that he had the door replaced and that the cost of the new door, disposal of the old door and installation of the new door cost \$250.00. No receipts or quotes were entered into evidence.

The landlord testified that the tenant damaged the living room wall and it required repair and re-painting. The landlord testified that it cost him \$200.00 for this repair. No receipts or quotes were entered into evidence. The tenant testified that the damage to the walls was pre-existing and that he did not damage the walls.

The landlord testified that the tenant removed the sun room doors which he had to re-install when the tenant moved out. The landlord testified that it cost \$75.00 to re-install the doors. No receipts or quotes were entered into evidence. The tenant testified that the doors were uninstalled when he moved into the subject rental property.

The landlord testified that the tenant cracked a tile in the bathroom. The landlord testified that he has not yet repaired it as he has not been able to find a matching tile. The landlord testified that he estimates the cost to repair the floor will be \$75.00. No receipts or quotes were entered into evidence. The tenant testified that the tile was broken when he moved in.

The landlord testified that the tenant left the light fixture in the kitchen uninstalled and damaged. The landlord testified that he repaired the light fixture himself and had it reinstalled which cost \$75.00. No receipts or quotes were entered into evidence. The tenant testified that he did not uninstall the light fixture or damage it.

The landlord testified that the tenant cracked a light switch which he had replaced. The landlord testified that this cost him \$50.00. No receipts or quotes were entered into evidence. The tenant testified that the light switch was damaged when he moved in.

The landlord testified that the tenant did not return the mailbox key and that its replacement cost him \$50.00. No receipts or quotes were entered into evidence. The tenant testified that he returned the mailbox key to the concierge.

The landlord testified that the subject rental property was dirty when the tenant moved out and he hired a professional cleaner to clean the subject rental property which cost \$175.00. No receipts or quotes were entered into evidence. The tenant testified that the subject rental property was clean when he moved out.

Analysis

Loss of Rental Income

Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

In this case, the tenant ended a one-year fixed term tenancy contrary to section 45(2) of the *Act*, thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlord for that loss of rental income.

The tenant testified that he provided the landlord with approximately two weeks' notice to end his fixed term tenancy. The landlord testified that the tenant did not provide him with any notice that he intended on breaching the fixed term tenancy agreement. The landlord testified that he was not able to find a tenant for the month of March 2019 due to the tenant's lack of notice but was able to find a tenant for April 2019.

I find the tenant has failed to prove that the landlord agreed the tenant was permitted to give less than one month's notice to end the fixed term tenancy or that the tenant would not be responsible for the landlord's loss of rent.

I find that whether the tenant provided two weeks' notice, or no notice of his intention to vacate the subject rental property, resulted in the landlord being unable to rent the subject rental property for the

month of March 2019. I find that the landlord mitigated his damages by finding a new tenant for April 1, 2019. The tenant, pursuant to section 7 and Policy Guideline 16, is therefore liable for April 2019's rent in the amount of \$1,300.00.

Claims for 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.

I find that the landlord failed to prove the amount of or value of the loss for the following claims as no receipts or quotes were entered into evidence:

Item	Amount
Purchase and replacement and disposal of broken laundry room door	\$310.00
Purchase and replacement and disposal of broken bathroom door	\$250.00
Repair of living room wall	\$200.00
Re-installation of sun room doors	\$75.00
Repair and installation of kitchen fixture	\$75.00
Repair of broken tile	\$75.00
Replace broken light switches	\$50.00
Replace mailbox key	\$50.00
Cleaning	\$175.00
TOTAL	\$1,260.00

I therefore dismiss the above claims for failure to prove the quantification of loss.

Security Deposit

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 e-mail is not a recognized method of service under the *Act*, I find that the landlord was sufficiently served with the tenant's forwarding address for the purposes of this *Act*, pursuant to section 71 of the *Act*, on March 2, 2019 because the landlord acknowledged receipt of it on that day.

While e-mail is not a recognized method of service under the *Act*, I find that the tenant was sufficiently served with the landlord's notice of final opportunity for inspection, for the purposes of this *Act*, pursuant to section 71 of the *Act*, on March 6, 2019 because the tenant acknowledged receipt of it on that day.

I find that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing, pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$650.00 in part satisfaction of his monetary claim.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

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

Item	Amount
March 2019 rent	\$1,300.00
Filing fee	\$100.00
Less security deposit	-\$650.00
TOTAL	\$750.00

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: July 03, 2019

Residential Tenancy Branch