



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-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;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, 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.

Preliminary Issue- Service

The landlord testified that she served the tenant with her application for dispute resolution by leaving a copy of it with a community service worker but could not recall on what date. The tenant testified that she received a copy of the landlord's application for dispute resolution from the community service worker but could not recall on what date.

While leaving a copy of the landlord's application for dispute resolution with a community service worker does not constitute proper service under section 89 of the *Act*, I find that the tenant was sufficiently served pursuant to section 71 of the *Act*, for the purposes of this *Act*, because the tenant acknowledged receipt of the package.

The landlord testified that she left a second copy of her application for dispute resolution with a community service worker for tenant T.S. Tenant T.S. did not attend this hearing. The tenant testified that she did not know if tenant T.S. received a copy of the landlord's application for dispute resolution. I find that the landlord has not served tenant T.S. with her application for

dispute resolution in accordance with section 89 of the *Act* or proved that tenant T.S. received it. I therefore dismiss the landlord's claim against tenant T.S. with leave to reapply.

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 a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
5. 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 agree that this tenancy began on October 1, 2018. The tenant testified she moved out on May 6, 2019. The landlord testified the tenant moved out between May 15-16, 2019. Both parties agree that monthly rent in the amount of \$1,700.00 was payable on the first day of each month. Both parties agree that a security deposit of \$850.00 and a pet damage deposit of \$150.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that section 2 of the tenancy agreement states that this is a fixed term tenancy set to end on March 31, 2019 and that this tenancy will end at that time. Both parties agree that at the time the tenancy agreement was entered into both parties understood that the tenant was required vacate the rental unit at the end of the fixed term because the landlord planned on moving back into the subject rental property. The above terms were stated in the tenancy agreement and initialed by both parties.

Both parties agree that the landlord did not ask the tenant to complete either a move in or move out condition inspection report. Both parties agree that move in and move out condition inspection reports were not completed by the parties.

Both parties agree that the tenant did not move out of the subject rental property on March 31, 2019, in accordance with the tenancy agreement. The tenant testified that she did not move out

on time because she suffered a head injury. Both parties agree that the tenant has not provided the landlord with her forward address in writing.

The landlord testified that she suffered the following damages resulting from the tenant not moving out in accordance with the tenancy agreement:

Item	Amount
Storage fees for April and May 2019	\$231.00
Accommodation	\$1,200.00
Total	\$1,431.00

The landlord testified that she was not informed that the tenant was not moving out in accordance with the tenancy agreement until March 31, 2019. The tenant did not dispute this evidence. The landlord testified that her lease at her residence was up and she was not able to extend it, so she had to put all of her belongings in storage for the months of April and May 2019. Storage cost her \$115.50 per month for a total of \$231.00. Receipts for same were entered into evidence.

The landlord testified that she had to find alternate accommodation for April and part of May 2019 in the amount of \$1,200.00. The tenant entered into evidence a signed letter stating that M.K. rented the tenant a room from April 1- May 17, 2019. The room was \$800.00 for the month of April 2019 and \$400.00 for the partial month of May 2019. The landlord testified that she moved back into the subject rental property on May 17, 2019. The landlord is seeking the cost of her alternate accommodation from the tenant.

The landlord testified that the tenant left garbage and food at the subject rental property and that it was dirty when she moved back in. The landlord testified that she hired a professional cleaner to clean the subject rental property. A cleaning receipt in the amount of \$168.00 was entered into evidence. The landlord is seeking this cost from the tenant.

The tenant testified that she cleaned the subject rental property when she moved out but left food and garbage bags at the subject rental property because she was not physically able to carry out the garbage bags and food. The tenant testified that she cleaned the cupboards and mopped the floors.

The landlord testified that the tenant damaged the walls in the bathroom by leaving duct tape on them. The landlord testified that the paint peeled off when she removed the duct tape and so the walls required re-painting. The tenant agreed that she left duct tape on the walls. The landlord testified that the subject rental property was last painted in March of 2017. The landlord entered into evidence a receipt in the amount of \$840.00. The landlord is seeking this cost from the tenant.

Both parties agree that the tenant did not pay any rent for April or May 2019. The landlord is seeking \$3,400.00 in unpaid rent.

Analysis

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 tenant failed to comply with section 2 of the tenancy agreement which states that the tenant was required to vacate the subject rental property by March 31, 2019 because the landlord planned on moving in. I find that the landlord suffered damages arising out of this non-compliance, specifically, the landlord incurred storage costs in the amount of \$231.00 and extra accommodation costs in the amount of \$1,200.00. I find that the landlord has proved the amount of her loss and acted reasonably to minimize that loss by finding reasonably low-cost storage and accommodation. I find the tenant is responsible for the above damages.

Based on the testimony of both parties I find that the tenant damaged the paint at the subject rental property which required re-painting. Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 22 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 26 months, the tenant is required to pay according to the following calculations:

$\$840.00 \text{ (cost of painting)} / 48 \text{ months (useful life of paint)} = \$17.50 \text{ (monthly cost)}$

$\$17.50 \text{ (monthly cost)} * 22 \text{ months (expected useful life of paint after tenant moved out)}$
 $= \$385.00$

Section 37 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 testimony of both parties, I find that the tenant did not leave the subject rental property clean as she admitted to leaving both food and garbage behind. The landlord submitted into evidence a cleaning receipt for \$168.00. I find that the tenant is responsible for this fee.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was

obligated to pay the monthly rent in the amount of \$1,700.00 on the first day of each month for April and May 2019 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$3,400.00 in unpaid rent.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In this case, the tenant has not provided the landlord with her forwarding address in writing, so the landlord is not yet required to return the tenants' deposits to her.

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.

Sections 24(2) and 36(2) of the *Act* states that 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 does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlord admitted that no joint move in or move out condition inspections were conducted and that no move in or move out condition inspection reports were completed. The landlord also testified that she did not provide the tenant with two opportunities to complete the move in or move out inspections with the last opportunity provided in writing. Responsibility for completing the move in and move out inspection reports rests with the landlord. I find that the landlord did not complete the condition inspection and inspection reports in accordance with the Regulations, contrary to sections 24 and 36 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move in and move out inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished. I note that this extinguishment only applies to monetary claims for damage to the subject rental property, it does not apply to claims for unpaid rent. I also note that, pursuant to Residential Tenancy Branch Policy Guideline # 17, the landlord is still permitted to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

In this case, since the landlord's claim for unpaid rent is greater than the total of the tenant's deposits, the extinguishment has no meaningful effect on the landlord's claim.

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 \$850.00 and the tenant's entire pet damage deposit in the amount of \$150.00 in part satisfaction of her monetary claim against the tenant.

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

Conclusion

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

Item	Amount
Storage	\$231.00
Alternate accomodation	\$1,200.00
Painting	\$385.00
Cleaning	\$168.00
Unpaid rent	\$3,400.00
Filing Fee	\$100.00
Less security deposit	-\$850.00
Less pet damage deposit	-\$150.00
TOTAL	\$4,484.00

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 29, 2019

Residential Tenancy Branch