



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy started in January 2015 and ended on March 31, 2019, although the Tenant moved out on or around March 23, 2019. Monthly rent at the end of the tenancy was \$915.00. A security deposit of \$425.00 was paid at the outset of the tenancy and the Landlord confirmed that she is still in possession of the full security deposit amount.

The Landlord has claimed a total of \$577.50, as well as the recovery of the \$100.00 filing fee.

The parties agreed that a move-in inspection was not completed. As for the move-out inspection, the parties were not in agreement as to what occurred. The Landlord stated that the Tenant had refused to meet for the move out inspection and that a couple different times had been arranged to try to accommodate.

The Landlord submitted a copy of text message communication with the Tenant into evidence. This included a text dated March 25, 2019 in which the Tenant asks when to do the key exchange. The Landlord responded with a time that she was available.

At the hearing, the Tenant stated his position that the text messages were fraudulent due to not showing his number and instead just a name inputted by the Landlord. In further text messages which were undated, the parties talk about cleaning the carpets and the Tenant responds that the Landlord is being unreasonable and therefore he won't waste his time coming to the rental unit. In a text message dated March 27, 2019 the Tenant states that the Landlord is not getting keys until he gets his deposit back. In this text the Tenant responds with the following:

K I'll just cancel the cleaner and write this off as a loss.

In an undated text message, the Landlord states that she will be at the rental unit tomorrow at 1:00 pm and the Tenant states that he will not be. In a text date March 27, 2019, the parties agree to meet on Sunday at 10:00 am. The Tenant asked for the deposit back in cash and when the Landlord responded that she needs to view the unit first, the Tenant responded that he will not be returning the keys.

The Landlord testified that she advised the Tenant she would be there at 1:00 pm on March 31, 2019 and that the Tenant did not show up. She stated that she completed the move-out inspection on her own as he was not present.

The Tenant provided testimony that when he moved out on March 23, 2019 he tried calling the Landlord but did not get a response. The Tenant submitted into evidence a copy of his phone records and highlighted one call from March 25, 2019 and two calls from March 31, 2019 which he stated were when he called the Landlord with no response.

He noted that he also tried calling the Landlord on March 31, 2019. He stated that the rental unit was cleaned when he moved out, including a shampoo of the carpets. The Tenant stated that he was of the understanding that they were meeting for the move-out inspection at 10:00 am on a Saturday and that he was there while the Landlord did not show up.

Tenant also submitted photos of the rental unit which he stated were taken after he had cleaned when moving out.

The Landlord is claiming \$183.75 for the cost of cleaning the rental unit. She submitted into evidence an invoice from a cleaning company dated April 10, 2019. The invoice notes 3.5 hours of cleaning and 3.5 hours of carpet cleaning at \$25.00 per hour for a total of \$183.75.

The Landlord submitted photos of the rental unit that she stated were taken on March 31, 2019. The Landlord referenced these photos and stated that they show the condition of the rental unit at the end of the tenancy.

The Landlord has also claimed \$145.00 for replacement of a tub spout. An invoice was included in evidence dated April 9, 2019 from a plumbing company. The invoice shows a charge of \$145.00. The Landlord stated that the spout on the bathtub was determined to be broken during the walkthrough she conducted on her own on March 31, 2019.

The Tenant stated that the tenancy ended through a Two Month Notice to End Tenancy for Landlord's Use of Property due to the rental unit being sold and the new owners moving in. He stated that as part of the conditions of the sale there was an inspection of the rental unit and it was determined that it was in good condition.

Lastly, the Landlord is claiming \$248.75 for the cost of a locksmith. She referenced the text messages submitted as evidence in which the Tenant stated that he would not be returning the keys. The Landlord stated that she needed to provide keys to the new owners for the possession date of April 5, 2019 and was also worried about safety with none of the keys being returned.

The Landlord submitted a copy of an invoice from a locksmith company dated April 23, 2019. The invoice notes that service was provided on March 31, 2019 as well as April 9, 2019. The Landlord stated that the April 9, 2019 date may be an error as this was the locksmith returning regarding the mail key and that this was completed prior to the possession date of April 5, 2019.

The Tenant stated that he should not be responsible for the cost of the locksmith. He noted that the new owners would likely be changing the locks anyway. The Tenant testified that he was more than willing to meet with the Landlord to give her keys, but that communication with the Landlord had become very difficult so the keys were not returned.

The Landlord stated that the Tenant's forwarding address was first provided by text message on April 4, 2019 and that she received a letter with his forwarding address on or around April 5, 2019. The Tenant submitted into evidence the letter to the Landlord dated April 5, 2019 in which the Tenant requests the return of the security deposit plus interest and provides his forwarding address.

The Tenant stated that his forwarding address was provided by text message in March 2019 and then through multiple letters to the Landlord. He confirmed that the first letter he sent with his forwarding address was the letter dated April 5, 2019.

Analysis

Based on the testimony and evidence of both parties, I find as follows:

Regarding the Landlord's claim for cleaning, Section 37 of the *Act* states that a tenant must leave the rental unit reasonably clean at the end of the tenancy. Although no Condition Inspection Reports were submitted to establish the condition of the rental unit at the start and end of the tenancy, I find that I have sufficient evidence before me to determine that the Tenant did not leave the rental unit clean. This includes the photos submitted by the Landlord that show a date of March 31, 2019 in the photo information. Although the Tenant submitted photos of the rental unit, there is no date as to when

these were taken. I also find the text messages to be evidence that supports my finding that it is likely that the Tenant did not leave the rental unit reasonably clean.

While the Tenant claimed that the text messages were fraudulent due to not showing his phone number, I find the information contained in the text messages to be in line with the testimony of both parties during the hearing and do not find evidence before me that would establish that the messages are fraudulent. In the text messages the Tenant states that if he does not get his deposit back right away then he is cancelling the cleaner and taking this as a loss. Therefore, I find it likely that the Tenant did not clean the rental unit adequately. I also find it unlikely that the Landlord paid for 7 hours of cleaning had the rental unit been left reasonably clean.

Therefore, despite the lack of move-in or move-out Condition Inspection Reports, I find sufficient evidence before me to be satisfied that the rental unit required cleaning and that the Tenant was not in compliance with the *Act* by leaving the rental unit reasonably clean. Accordingly, I award the Landlord \$183.75 for cleaning.

Regarding the claim for the repair of the tub spout, the parties agreed that a move-in inspection was not completed and although the Landlord stated that a move-out inspection was completed on her own, I find that I have insufficient evidence to establish this. The Landlord did not submit a copy of the move-out Condition Inspection Report and did not submit evidence that she attempted to schedule the inspection in accordance with Section 35 of the *Act*, including that at least two opportunities were offered to the Tenant.

In the absence of documentation that would confirm the condition of the rental unit at the start and end of the tenancy, I do not find an invoice from a plumber to be sufficient evidence to establish that the damage to the tub spout occurred during the tenancy. As such, I decline to award compensation to the Landlord for this claim.

Regarding the claim for the locksmith, the Landlord has claimed \$248.75 for the cost of the locksmith rekeying the rental unit as well as the mailbox. The parties seemed to agree that the Tenant did not return the keys, although they had different opinions on why. The Landlord stated that the Tenant refused to return them when he did not receive his deposit back and the Tenant stated that he was unable to return them as the Landlord refused to meet with him or communicate with him.

As stated in Section 37(2)(b) of the *Act*, a tenant must return all keys and other means of access to the landlord at the end of the tenancy. I accept the testimony and evidence

before me that the Tenant did not do so and thus find that he was not in compliance with the *Act*. I also accept the text messages submitted and as stated, do not find evidence before me that would indicate that they are fraudulent.

Instead, I find it clear in the text messages that the Tenant was upset regarding the security deposit and was withholding the keys as a result. I also note that had the parties not been able to meet on the day of move-out, there are other ways of returning the keys that do not involve meeting face to face. Therefore, I find it reasonable that the Landlord would re-key the rental unit. Despite the rental unit being sold, I still find that the Landlord was reasonable in ensuring the new owner's safety and also ensuring the transition of the rental unit in a responsible manner. Therefore, I find the Landlord has established her claim for the locksmith in the amount of \$248.75.

Regarding the security deposit, I refer to Section 38(1) of the *Act* which states that within 15 days of the later date of the end of tenancy or the date the forwarding address is provided in writing, the landlord must return the security deposit or file a claim against it.

Although the parties testified as to the Tenant's forwarding address provided by text message, I find evidence that the forwarding address was provided in writing through a letter dated April 5, 2019, of which the Landlord confirmed receipt. Therefore, I find that the Landlord had 15 days from receipt of this letter to return the deposit or file a claim against it. The Landlord filed the Application for Dispute Resolution on April 11, 2019 which is within the allowable timeframe. Therefore, I find that the Landlord was in compliance with Section 38(1) of the *Act* and does not owe the Tenant double the deposit pursuant to Section 38(6) of the *Act*. The Landlord may retain the security deposit towards the amount found to be owing.

I also note that based on the dates of the tenancy there is no interest payable on the security deposit to the Tenant.

As the Landlord was partially successful with her application, pursuant to Section 72 of the *Act* I award the Landlord \$100.00 for the recovery of the filing fee. The Landlord is granted a Monetary Order in the amount outlined below:

Cleaning	\$183.75
Locksmith	\$248.75
Recovery of filing fee	\$100.00

<i>Less Security deposit</i>	<i>(\$425.00)</i>
Total owing to Landlord	\$107.50

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$107.50** as outlined above. 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 24, 2019

Residential Tenancy Branch