



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX DAWSON CREEK REALTY
CHETWYND and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-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 for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) and the Tenant were both present for the duration of the hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenant did not submit any evidence prior to the hearing.

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 for unpaid rent?

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 which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on March 15, 2019. Rent in the amount of \$1,100.00 was due on the first day of each month and a security deposit of \$650.00 was paid at the start of the tenancy. The Landlord is still holding the full security deposit amount.

The Tenant testified that he moved out on March 31, 2019. The Landlord testified that it may have been March 31, 2019, but she was unable to enter the rental unit and confirm until April 2, 2019.

The parties were in agreement that the Tenant sent a text message to the Landlord on March 26, 2019 stating that he would be moving out on March 31, 2019.

The Landlord was initially seeking an amount of \$1,262.50 and at the hearing removed her claim for postage costs. She stated that her current claim is \$1,252.50, which includes the recovery of the filing fee paid for the application.

Firstly, the Landlord is seeking cleaning costs in the amount of \$52.50. The Landlord submitted the Condition Inspection Report which was signed by the Landlord and Tenant at move-in on March 15, 2019 and by only the Landlord at move-out on April 2, 2019. The move-in condition is stated as good while the move out report notes dirt throughout the rental unit and some items left behind.

The parties were not in agreement as to what happened with the move-out inspection. The Tenant stated that he asked to meet the Landlord on March 31, 2019 but was told she did not have time and would be in touch to arrange a time to meet. The Landlord stated that she tried to call the Tenant but was unable to get in touch. The Landlord was unsure as to whether the Tenant was informed that the move-out inspection would be on April 2, 2019.

The Landlord submitted an invoice for cleaning and junk disposal dated April 8, 2019 which notes cleaning and disposal of debris. The Landlord stated that the rental unit needed a general cleaning, the fridge that was in the living room required moving back, and the junk such as boxes left behind to be disposed of. The Landlord submitted photos of various areas of the rental unit, including the bathroom, kitchen and floors.

The Tenant stated that he swept and mopped before moving out and that although he left some cardboard behind, this was neatly stacked.

The Landlord is also seeking \$1,100.00 for unpaid rent for April 2019. The Landlord stated that since they did not receive a full month notice that the Tenant was ending the tenancy, the Tenant was still to pay \$1,100.00 on April 1, 2019 as per the tenancy agreement. The Landlord stated that they began advertising the rental unit right away but were unable to re-rent until into May 2019.

The Tenant stated that he was unaware of the rules, but when notified that he should have provided one month notice to end the tenancy he offered that the Landlord could keep the security deposit. However, he stated that after he received the hearing documents he asked for the security deposit back.

The Landlord testified that she received the Tenant's forwarding address on March 27, 2019.

Analysis

Regarding the Landlord's claim for cleaning, I do not find the Condition Inspection Report to be valid evidence as I do not have enough information before me to establish that the Landlord was in compliance with Section 35 of the *Act*. Section 35 requires the landlord to offer at least two opportunities for the tenant to attend the inspection. In the absence of testimony or evidence that would establish that this occurred, I do not accept that the inspection report is evidence of the condition of the rental unit at the end of the tenancy as the Tenant may not have had an opportunity to attend.

However, I accept the photos submitted into evidence that show some areas of the rental unit that required cleaning, as well as that some furniture and boxes were left behind and that the fridge was placed in the living room. I also accept the testimony of the Tenant that he left cardboard behind. I find the amount claimed to be reasonable to dispose of the items and move the fridge, as well as to do a general clean in the rental unit. Therefore, I award the Landlord the amount of \$52.50 as claimed.

Regarding the claim for unpaid rent, I refer to Section 45(1) of the *Act* which states the following about ending a month to month tenancy:

45 (1) A tenant may end a periodic 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, and
- (b) 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.

As stated, a tenant must provide at least one full rental month of notice to end the tenancy. By providing notice on March 26, 2019, I find that the Tenant was not in compliance with the *Act*. As notice on March 26, 2019 would end the tenancy at the end of April 2019, I find that the Tenant owed rent as due on April 1, 2019 in the amount of \$1,100.00.

I also note that pursuant to Section 53 of the *Act*, incorrect effective dates of a notice to end tenancy are automatically corrected. Therefore, I find that the Tenant's notice on March 26, 2019 to end the tenancy on March 31, 2019 automatically corrects to an effective date of April 30, 2019. Despite moving out on March 31, 2019, I find that the tenancy ended on April 30, 2019. As such, I find that the Tenant owed rent as due on April 1, 2019 in the amount of \$1,100.00.

I also note that a landlord has a duty to take reasonable steps to mitigate their losses. I accept the testimony of the Landlord that the rental unit was advertised for re-rental right away and that they were unable to find a new tenant until May 2019. Therefore, due to the Tenant's breach of the *Act* and the resulting loss to the Landlord, I find that the Landlord is entitled to compensation in the amount of \$1,100.00 for April 2019 rent.

Regarding the security deposit, as stated in Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends, or the forwarding address is provided in writing to return the deposit or file a claim against it. The Landlord testified that the Tenant's forwarding address was provided on March 27, 2019. However, as stated, the Tenant's notice to end the tenancy provided on March 26, 2019 would end the tenancy at the end of April 2019. Therefore, as the Landlord filed the application on April 24, 2019, I find that they applied prior to the tenancy ending on April 30, 2019 and as such within the 15 days allowable. Accordingly, the Landlord does not owe the Tenant double the deposit and instead may retain the security deposit towards compensation owed.

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

Cleaning/disposal	\$52.50
April 2019 rent	\$1,100.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$650.00)</i>
Total owing to Landlord	\$602.50

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$602.50** 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: August 1, 2019

Residential Tenancy Branch