



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY
and [tenant name suppressed to protect privacy]

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.

An agent for the Landlord (the “Landlord”) and the Tenant were both present for 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 also submitted an amendment form to change the amount of the monetary claim on May 22, 2019. The Tenant confirmed receipt of this amendment and the new Monetary Order Worksheet. 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.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

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

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on July 9, 2018. Monthly rent was \$1,500.00 and a security deposit of \$750.00 was paid at the start of the tenancy.

The Landlord submitted a copy of a Mutual Agreement to End Tenancy form into evidence signed by both parties on February 7, 2019. The agreement was for the tenancy to end on April 30, 2019 at 1:00 pm.

The Landlord provided testimony that the Tenant did not move out until around 2:00 am on May 2, 2019 and is therefore claiming two days of rent in the amount of \$96.77 for overholding the rental unit. The Landlord stated that she had a conversation with the Tenant's new property manager who advised that the Tenant was unable to move into his new rental unit right away. The Landlord stated that she would figure out what she could do, but never told the Tenant that he could stay in the rental unit for free. The Landlord stated that there was not much she could do as the Tenant's belongings were still in the rental unit.

The Tenant testified that he had a new rental unit lined up but the previous tenants in that unit did not move out on time. He stated that this caused a ripple effect in that he could not move into the rental unit as planned and needed to stay in his current unit. The Tenant submitted that the Landlord provided him with one day to sort the issue out and noted that he was moved out by 2:00 am on May 2, 2019. He stated that through the conversation he had with the Landlord he understood that he would not have to pay for the additional day.

The Tenant stated that this situation was out of his control and he did his best to move out of the rental unit when able to do so. He noted that he moved out at 2:00 am as soon as the new rental unit became available.

The Landlord is also seeking \$179.96 for the cost of renting a moving truck for an additional two days due to the delay in the Tenant moving out of the rental unit. The Landlord stated that the rental unit had been sold and the new owners were set to take

possession on April 30, 2019. However, due to the delay in the Tenant moving out, the new owners were unable to take possession until May 2, 2019.

As such, the new owners had to keep their belonging in the rental truck for an additional two days and incurred additional costs of \$179.96 for the extra rental days that they charged the Landlord for. The Landlord submitted an invoice dated May 2, 2019 for charges in the amount of \$179.96. The invoice indicates that the truck was rented from April 30, 2019 to May 2, 2019.

The Tenant again stated that the sequence of events was out of his control and created difficulties for many people. He further stated that what occurred was not deliberate and led to incurred costs for him as well.

The Landlord had applied for \$100.00 for the cost of replacement keys but withdrew this claim at the hearing as she stated that the matter had been resolved.

The Landlord is also seeking compensation for a move-out fee in the amount of \$100.00. The Landlord referenced clause 22 in the tenancy agreement addendum regarding a move-out fee. She stated that the Tenant had not paid any money towards this fee. The Tenant stated that he was not aware of a move-out fee but agreed to pay \$100.00 for this fee out of his security deposit.

Lastly, the Landlord is seeking compensation for utility bills from the city for a total amount of \$486.49. Clause 34 of the tenancy agreement addendum notes the following:

The tenant agrees to pay for all water bills issued by the city for the subject property.

The Landlord also noted that the tenancy agreement does not state that water or sewer costs are included in the rent.

The Landlord submitted an annual water and sewer bill for 2018 dated February 16, 2018 for the amount of \$580.00. The Landlord calculated the Tenant's portion as \$276.49 for the 174 days of 2018 that he resided in the rental unit. A second water and sewer bill for 2019 dated February 14, 2019 was for the amount of \$630.00. The Landlord calculated the Tenant's portion for four months of 2019 at \$210.00.

The Tenant stated that there was an issue with the bathroom during the tenancy such that the water kept running in the toilet tank. He stated that the Landlord was aware of

this issue at the start of the tenancy but did not send a plumber to look at the issue until December 2018. The Tenant further stated that the water kept running and refilling the tank so was using quite a bit of water. As such, he stated his position that he should not have to pay the full water bill. The Tenant stated that he had told the Landlord that he would pay a percentage of the water bill but did not hear further regarding how much he owed.

The Landlord stated that there was a small trickle of water in the tank of the toilet that they were aware of. The Landlord stated that they had a plumber attempt to contact the Tenant multiple times, but they were unable to connect for quite a while. The Landlord was unsure of the exact date but stated that the issue was resolved. She also noted that after the issue was fixed the bill for the following year was a similar amount, thus establishing that it was not a major issue.

Regarding the security deposit, the parties agreed that the Tenant participated in the move-in and move-out inspections and did not agree to any deductions from the security deposit. They were also in agreement that the Tenant's forwarding address was provided on May 2, 2019.

Analysis

Regarding the Landlord's claim for compensation, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant testified that he was unable to move out on April 30, 2019 due to circumstances out of his control. However, regardless as to the circumstances that led to the Tenant overholding the rental unit, I find that the Tenant was in breach of the *Act* and that the Landlord experienced a loss as a result.

I find evidence before me that the Tenant signed a mutual agreement to end the tenancy at 1:00 pm on April 30, 2019. Upon review of the mutual agreement, I find it to be in compliance with Section 44(1)(c) of the *Act* in that the parties agreed in writing to end the tenancy on April 30, 2019. Therefore, by not moving out on April 30, 2019 I find that the Tenant was in breach of the *Act*. Although the Landlord provided time for the Tenant to stay, I find that the Landlord had few options given that the Tenant's belongings were still in the rental unit.

I also do not find evidence before me that the parties agreed that the Tenant could stay in the rental unit at no charge. Instead, I find that the Landlord experienced a loss of two days of rental income. Although the Tenant moved out early in the morning on May 2, 2019, I still find that he overheld the rental unit by two days, given that he was in the rental unit on May 1 and May 2, 2019.

Therefore, I find that the Landlord has established that they are entitled to compensation for rent for May 1 and May 2, 2019. I accept the calculations of the Landlord as to the daily rent amount and therefore award the Landlord \$96.77 for unpaid rent as claimed.

Regarding the claim for the truck rental for the new owners to move into the rental unit, I also find that this was a loss experienced by the Landlord who likely received this bill from the new owners. Again, I find that this loss is connected to the Tenant's breach of the *Act* by not moving out on the agreed upon date. I find that the Landlord has established the value of the loss through the truck rental receipt provided and therefore award an amount of \$179.96.

I accept the Tenant's testimony that he agrees to pay the move-out fee of \$100.00 and therefore award this amount to the Landlord.

Regarding the utility bills, I find that as per the tenancy agreement and tenancy agreement addendum that the Tenant was responsible for water and sewer bills during the tenancy.

While the parties were not in agreement as to whether an issue with the toilet at the start of the tenancy impacted the water bills, I do not find any evidence before me to establish that it did. Upon review of the bills, it also seems that the amount charged for water and sewer is not based on usage but through a standard yearly rate as the bills note "annual sewer" and "annual water" charges and do not contain any usage

information. This also seems to be the case due to the bill being issued at the start of the year instead of the end.

As such, regardless of an issue with the toilet, I find that the Tenant owes the portion of the utility bills for 2018 and 2019 during the time that he was residing in the rental unit as agreed upon in the tenancy agreement and addendum. I find the calculations by the Landlord as to the amounts owing to be accurate for the time in which the Tenant was residing in the rental unit and therefore award the Landlord \$486.89 as claimed for the utility bills.

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.

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 date the forwarding address is provided in writing to return the security deposit or file a claim against it.

The parties agreed that the Tenant moved out on May 2, 2019 and provided his forwarding address on the same day. Therefore, I find that the Landlord had 15 days from this date to return the deposit or file against it. As the Landlord filed the Application for Dispute Resolution on May 3, 2019 I find that they were in compliance with Section 38(1) of the *Act* and therefore Section 38(6) does not apply. The Landlord may retain the security deposit towards the total compensation owed.

Pursuant to Section 67 of the *Act*, I award the Landlord a Monetary Order in the amount outlined below:

| | |
|--------------------------------------|-------------------|
| May 1 and May 2, 2019 rent | \$96.77 |
| Truck rental April 30 to May 2, 2019 | \$179.96 |
| Move out fee | \$100.00 |
| Utility bills | \$486.49 |
| Filing fee | \$100.00 |
| <i>Less Security deposit</i> | <i>(\$750.00)</i> |
| Total owing to Landlord | \$213.22 |

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$213.22** 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 14, 2019

Residential Tenancy Branch