



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 damages, 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 an agent for the Tenant (the “Tenant”) were 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 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 for damages?

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 on May 15, 2018 and ended on April 15, 2019. Rent in the amount of \$1,750.00 was due on the first day of each month. A security deposit of \$875.00 was paid at the outset of the tenancy and of which the Landlord still holds.

The Landlord has claimed a total of \$1,697.50 for repairs, cleaning and loss of rental income. The Landlord testified that the Tenant was not in the country for the move-in inspection and while a family member of the Tenant viewed the rental unit with the Landlord, a move-in report was not completed. He stated that the Tenant participated in the move-out inspection and did not agree as to the condition of the rental unit at that time.

A copy of the Condition Inspection Report was submitted into evidence. The Landlord stated that at the time of move-out he filled in the information about the condition of the unit at move-in. The report notes no issues at move-in and notes dirt, garbage left behind and some damage in the rental unit at the time of the move-out inspection on April 16, 2019. The report was signed by the Tenant but states that he does not agree as to the condition of the rental unit. Both parties stated that the Tenant did not agree in writing to any deductions from the security deposit.

The Tenant stated that as the Tenant or an agent for the Tenant did not sign the inspection report at move-in, the condition of the rental unit at move-in is in question. The Tenant stated that they were present for the inspection at move-out and confirmed that the condition of the unit at move-out was not agreed upon.

The parties both confirmed that the Tenant's forwarding address was provided to the Landlord on April 16, 2019.

The Landlord is seeking \$187.95 for the cost of plumbing services to replace the bathroom sink stopper which the Landlord stated was no longer working at the end of the tenancy. The Landlord submitted a text message dated April 19, 2019 in which he was provided a quote of \$149.00 per hour plus \$30.00 to \$40.00 for parts. The Landlord stated that the company that provided the quote was unavailable to complete the work, so the work was completed by another company.

The Tenant stated that they are not sure what the Landlord is referencing in terms of an issue with the bathroom sink. They stated that this may have been a pre-existing issue

and also questioned why only a quote had been provided instead of the actual invoice for completion of the work.

The Landlord has also claimed \$284.55 for cleaning. He stated that the rental unit was left dirty including garbage left behind in various areas of the rental unit. The Landlord submitted numerous photos of the rental unit that he stated were taken before the tenancy started and at the end of the tenancy. He stated that the rental unit was in great condition at the start of the tenancy and that this was the first time the unit had been rented. The Landlord stated that the before photos were taken approximately one month before the Tenant moved in.

The Landlord submitted an email quote from a cleaning company dated April 18, 2019 in the amount of \$271.00 plus tax. The Landlord stated that he had the cleaning completed by a different company due to availability.

The Tenant stated that the rental unit was left clean as required and that other than reasonable wear and tear the unit was in good condition at the end of the tenancy. They stated that it was cleaned as per the guidelines and as to how the unit was received at the start of the tenancy. The Tenant again noted that the condition of the rental unit at the start of the tenancy is in question.

The Landlord has also claimed \$200.00 to replace the trim between the bathroom and the hallway. He stated that the trim was broken during the tenancy due to excessive moisture from water that was getting into the trim. The Landlord stated that this issue was first pointed out to the Tenant in December 2018 and he had warned the Tenant regarding the moisture issue from the bathroom. He stated that he noticed the further damage due to moisture and mould that had damaged the trim at the move-out inspection. The Landlord submitted an invoice dated April 23, 2019 for replacement of the bathroom trim in the amount of \$200.00.

The Tenant stated that they had no awareness that this was an issue until receipt of the hearing documents and that they had not received any complaints about an issue with the bathroom trim. The Tenant stated that they took precautions to prevent excessive moisture and therefore mould.

The Landlord is also seeking \$150.00 for replacement of the door lock. He testified that he provided two keys to the Tenant's family member at the start of the tenancy and that only one was returned at the end of the tenancy due to the Tenants losing one. The Landlord submitted an invoice dated April 24, 2019 in the amount of \$150.00 for the

cost of parts and labour for replacement of the door lock. The Landlord stated that they had to replace the lock due to safety concerns with the lost key.

The Tenant was in agreement that they lost one entrance key to the unit. She stated her position that the key could have been copied instead of full replacement of the door lock. She stated that they would pay for the cost of copying the key only as they were upfront and honest about losing the key.

Lastly, the Landlord has claimed \$875.00 which is the equivalent of half a month rent. He states that they experienced a two-week loss of rental unit due to the repairs and cleaning that were required. The Landlord confirmed that they had received notice from the Tenant that they were moving out and started advertising the rental unit about one week later. He stated that he had advertised for April 15, 2019 and had potential tenants interested.

However, the Landlord stated that he had to turn tenants away due to needing to clean the rental unit. The Landlord also submitted that he needed time to call contractors to complete the repairs and that no new tenant would have moved into the rental unit in the condition it was in. The Landlord stated that they were unable to re-rent the unit until after May 1, 2019.

The Tenant stated that they provided more than one month notice to end the tenancy and the Landlord should have been able to re-rent the unit within this time.

Analysis

As the Landlord has applied 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.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss provides further guidance to determining if compensation is due through a four-part test as follows:

- 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.

Regarding the Condition Inspection Report, I do not find this to be valid evidence as to the condition of the rental unit at the start of the tenancy as the Tenant or an agent did not participate as required by Section 23 of the *Act*. I do not find that filling out the move-in inspection at the end of the tenancy is adequate for establishing the condition of the rental unit at the start of the tenancy and do not find that this meets the requirements of the *Act*.

Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”) states the following:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this matter, as stated I do not find the move-in inspection to be valid evidence due to completion at the end of the tenancy. I also do not find the move-out inspection to be compelling evidence due to the Tenant signing stating that they do not agree with the condition of the unit as described. Although the Landlord submitted photos of the rental unit from before the tenancy started and that he stated were taken at the end of the tenancy, I do not find that this qualifies as a ‘preponderance’ of evidence to establish the condition of the rental unit at the start of the tenancy or the condition at the end of the tenancy.

As stated in the four-part test outlined above, a party claiming compensation not only has to establish that the other party breached the *Act* which caused a loss but must also establish the value of their loss. For the plumbing and cleaning claims, the Landlord submitted quotes for services from companies that did not end up completing the work.

As I find insufficient evidence to establish how much the Landlord actually spent on cleaning and plumbing, I am not satisfied as to the value of the loss, as well as not being satisfied as to the Tenant's breach of the *Act*. Accordingly, I decline to award compensation for plumbing or cleaning costs as claimed.

Regarding the Landlord's claim for replacement of the bathroom trim, I am also not satisfied that the Landlord has met the burden of proof to establish that this damage occurred during the tenancy. As stated in Section 37 of the *Act*, a tenant must leave the rental unit reasonable clean and undamaged at the end of the tenancy. However, without further information to establish the condition of the bathroom trim at the start of the tenancy, I am not satisfied that damage to the trim was caused by a breach of the *Act* by the Tenant. Therefore, I decline to award compensation for the bathroom trim replacement.

Regarding replacement of the door lock, I note that Section 37 of the *Act* requires that at the end of the tenancy all of the keys and other means of access are returned to the landlord. As the Tenant was in agreement that one key was lost during the tenancy and therefore only one key returned, I find it reasonable that the Landlord would have replaced the lock to the rental unit. While the Tenant questioned why the key could not have been copied, I find it the responsibility of the Landlord to ensure the safety of access to the rental unit and with a lost key find that full replacement of the lock is reasonable. I also accept the amount claimed as stated on the invoice and therefore award the Landlord \$150.00 for replacement of the lock.

As for the Landlord's claim for loss of rental income, I decline to award any compensation. As stated in Section 7 of the *Act* and in the four-part test, a landlord has a duty to take reasonable steps to mitigate a potential loss. As the parties agreed that the Tenants provided adequate notice to end the tenancy on April 15, 2019, I find that the Landlord had time to advertise the rental unit and seek new tenants. However, as the tenancy ended on April 15, 2019 and the move-out inspection was completed on April 16, 2019 I find it likely that the Landlord had been unable to find new tenants for the unit, which is not the responsibility of the tenants in a month-to-month agreement.

I also find insufficient evidence before me to establish that there was significant cleaning and repairs needed in the rental unit such that the Landlord required two weeks to complete the work and could not have completed this with new tenants in place. I also find insufficient evidence before me to establish the steps taken by the Landlord to mitigate a potential loss such as advertisements for the unit and communication with

potential tenants. Therefore, I do not find that the Landlord met the burden of proof to establish that reasonable steps were taken to mitigate the loss and that the Tenant should be responsible for the rental unit not being re-rented as of April 15, 2019.

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 was provided in writing to return the security deposit or file a claim against it. As the tenancy ended on April 15, 2019 and the forwarding address was provided on April 16, 2019 I find that the Landlord had 15 days from April 16, 2019 to return the deposit or file a claim against it.

As the Landlord applied on April 19, 2019 I find that he applied within the allowable timeframe. While the Tenant mentioned a request for double the deposit, I do not find that this applies. First of all, Section 38(6) does not apply as the Landlord was in compliance with Section 38(1) of the *Act*. I also note that pursuant to Section 38(5) of the *Act* a landlord's right to claim against the deposit for damages is extinguished if the requirements of the Condition Inspection Report are not met.

However, although the Condition Inspection Report was not completed in accordance with the *Act*, I find that the Landlord did not claim solely for damages and instead also claimed for cleaning and unpaid rent. Therefore, the Tenant is not entitled to double the deposit and the Landlord may retain the security deposit towards compensation found to be owing. The remainder of the deposit must be returned to the Tenant as I do not find that the Landlord has authorization under the *Act* to retain any additional amount from the security deposit other than what is awarded through this decision.

As I find the Landlord's application had merit on the basis of the claim for lock replacement, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00.

The Tenant is awarded a Monetary Order in the amount outlined below:

Return of security deposit	\$875.00
<i>Less lock replacement</i>	<i>(\$150.00)</i>
<i>Less filing fee</i>	<i>(\$100.00)</i>
Total owing to Tenant	\$625.00

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$625.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 07, 2019

Residential Tenancy Branch