



Dispute Resolution Services

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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 was present for the teleconference hearing while no one called in for the Tenant during the approximately 20 minutes that the phone line was monitored. The Landlord was affirmed to be truthful in his testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of his evidence by registered mail.

The Landlord provided a registered mail receipt in evidence and the tracking number is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was mailed on May 3, 2019 and delivered on May 7, 2019. The name of the person who signed for the package is the same as the Tenant’s. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

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, not all details of the submissions are reproduced here.

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on November 1, 2018. Rent in the amount of \$850.00 was due on the first day of each month. The Tenant paid a security deposit of \$425.00 which the Landlord confirmed they are still holding. The Landlord testified that the Tenant moved out on March 31, 2019, although some garbage and other items were left behind.

The Landlord submitted a copy of the Condition Inspection Report. The report notes that the move-in inspection was conducted on October 30, 2018 and the move-out inspection on April 6, 2019. The Landlord stated that the Tenant participated in the move-in inspection, but not at move out. He stated that he was having a difficult time communicating with the Tenant and noted that there was police involvement. He stated that he proposed times to meet with the Tenant and that the Tenant was aware that the inspection was scheduled for April 6, 2019 but did not attend. The Landlord stated that he was also communicating through the police to get in contact with the Tenant.

The Landlord confirmed that the Tenant did not agree to any deductions from the security deposit. He also stated that he received the Tenant's forwarding address prior to her moving out. He stated that this was likely in mid-March 2019.

The Landlord has applied for a total of \$2,263.54. This includes a claim for handyman services for replacement of the door and doorframe in the rental unit for a cost of \$420.80. The Landlord testified that this was the main door accessing the rental unit. He stated that there was fighting in the rental unit and the door was kicked in and damaged. The Landlord referenced an email submitted in his evidence dated March 6, 2019 in which the Tenant discusses the damaged door. In this email, the Tenant states in part the following:

Yes I am trying to fix door as [names of 2 people] broke it the day I moved in so it wouldn't stay shut properly.

The Landlord also submitted an invoice for the door repair dated April 2, 2019 in the amount of \$420.80. It is noted on the invoice that this included the cost of repairing the existing door, supplies, and repairing damage to the damaged door frame.

The Landlord is also seeking \$145.00 for electrical repair work. He stated that during the tenancy there was a small fire in the electrical panel of the rental unit and that the power was out in the unit. He stated that the Tenants called him during the tenancy about this issue, but they would not let anyone into the unit to complete repairs. The Landlord stated that it was not an issue that occurred with the electrical panel and instead was determined to be 100% due to tampering. The Landlord submitted an invoice dated April 5, 2019 in the amount of \$145.00 for electrical services.

The Landlord has also claimed \$165.00 for cleaning. He submitted an invoice dated April 7, 2019 in the amount of \$165.00 which notes that this included 3.5 hours of vacuuming, floor cleaning, washing floors and cleaning the bathroom, and 7.5 hours of moving boxes, cleaning the stove and fridge, and hauling garbage from the fridge to the dumpster.

The Landlord testified that although the Tenant moved out on March 31, 2019, there were lots of belongings, garbage and other items left behind that had to be dealt with.

The Landlord has also claimed \$682.74 for replacement of the main exterior locks to the residential building. He stated that the Tenant would not return the keys to the main door of the building and noted that the police had tried to obtain the keys but were unable to. As this is a multi-unit building, the Landlord stated that they had to get the building re-keyed and provide new keys to each of the occupants due to safety concerns.

The Landlord submitted an invoice dated April 24, 2019 in the amount of \$682.74. It is noted on the invoice that the three locks for the main entrance were replaced and 34 new keys issued for security purposes.

Lastly, the Landlord is seeking \$850.00 for loss of one month of rental income. He stated that they had been provided an Order of Possession from the Residential Tenancy Branch and that the Tenants had also provided notices to end the tenancy on three different occasions. He stated that the situation was very challenging and that the police became involved to mediate. The Landlord testified that although the Tenants moved out at the end of March 2019, they were using the rental unit as storage

meaning that new tenants were unable to move in for April 1, 2019. He noted that the cleaning and repairs in the rental unit were completed around April 15, 2019.

The Landlord stated that in March 2019 they advertised the rental unit for April 1, 2019 but were unable to find anyone. After the repairs and cleaning were completed in mid-April 2019, the Landlord stated that they advertised the rental unit again for May 1, 2019. The Landlord noted that they do not rent their units mid-month and instead only rent from the first of each month.

The Landlord submitted a copy of an email from the Tenant dated April 1, 2019 in which the Tenant notes that the cleaning will be done, and keys provided on the following Wednesday.

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.

I accept the undisputed testimony of the Landlord that the Tenant was provided notice of the move-out inspection and did not participate. As such, I accept the Condition Inspection Report as valid evidence and find that it notes dirt and damage throughout the rental unit.

Regarding the Landlord's claim for the cost of repairing the door and door frame, I accept the testimony of the Landlord as to what occurred with the door. I also find that the email from the Tenant to establish that the door was damaged at the start of the tenancy and find that the invoice submitted establishes the amount as claimed by the Landlord. As stated in Section 37 of the *Act*, a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. I am satisfied that the Landlord has proven, on a balance of probabilities, that the door was damaged during the tenancy. Therefore, I award the Landlord \$420.80 for the costs of repairing the door.

I also accept the testimony of the Landlord regarding what occurred with the electrical panel during the tenancy and accept his testimony that it was damage caused by tampering, not due to an issue with the panel. I am also satisfied as to the amount claimed due to the invoice submitted and therefore award the Landlord an amount of \$145.00 for electrician costs.

Regarding the cleaning, I find that the Condition Inspection Report establishes that the rental unit was not left in a reasonably clean condition at the end of the tenancy. I also accept the Landlord's testimony that there was garbage and other items left behind that required packing and moving out of the rental unit, as also noted on the invoice. As such, I find that the Tenant is responsible for the cleaning costs in the amount of \$165.00.

As for the lock replacement costs, I also find that the Landlord is entitled to compensation in the amount claimed. As noted on the move-out inspection, the keys were not returned as required by Section 37 of the *Act*. As this is a multi-unit building, I find it reasonable that the Landlord would re-key the building due to safety and security concerns and provide new keys to the occupants. As such, I award the Landlord an amount of \$682.74 as claimed.

The Landlord has also claimed \$850.00 for loss of rental income. I accept the testimony of the Landlord that they attempted to re-rent the unit for April 1, 2019 but were unable to find anyone. I also find that the email communication with the Tenant that was submitted into evidence establishes that the Tenant was still not completely moved out as of the date of the email, April 1, 2019 and that the Tenant had plans to finish moving

out a few days later. As such, I find that the Landlord would be unable to re-rent the unit for April 1, 2019 as the Tenant and/or Tenant's belongings were still in the rental unit.

However, as stated in Section 7 of the *Act* and as noted in the four-part test outlined above, a party claiming a loss has a duty to take reasonable steps to mitigate potential losses. I accept the Landlord's testimony that the cleaning and repairs were completed around April 15, 2019 and therefore find that the Landlord could have attempted to re-rent the unit for mid-April 2019.

Instead, the Landlord stated that they only rent from the first of the month, which I do not find to be taking reasonable steps to mitigate further loss. As such, I am satisfied that the Landlord lost half a month rent due to the Tenant overholding and therefore award \$425.00 for rent for the period of April 1, 2019 to April 15, 2019. I decline to award the full month compensation as stated as I do not find that reasonable steps were taken to mitigate the loss for the remaining two weeks of April 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 date the forwarding address was provided in writing to return the deposit or file a claim against it. The Landlord testified that the Tenant's forwarding address was provided sometime in March 2019. Although the Landlord state that the tenancy ended on March 31, 2019, I find that the tenancy actually ended on April 6, 2019 when the Condition Inspection Report was completed which means the Landlord had 15 days from April 6, 2019 to return the deposit or file a claim against it.

As the Landlord filed the Application for Dispute Resolution on April 26, 2019, he did not file within the 15 days allowable and therefore did not comply with Section 38(1) of the *Act*. As such, I find that Section 38(6) applies, and the Landlord owes the Tenant double the security deposit. However, as it was determined that the Tenant owes the Landlord compensation, the Landlord may retain the security deposit and the amount to double the deposit towards compensation owed.

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

Door and frame repair	\$420.80
Electrical repair	\$145.00

Cleaning	\$165.00
Lock and key replacement	\$682.74
Unpaid rent April 1 to April 15, 2019	\$425.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$425.00)</i>
<i>Less amount to double security deposit</i>	<i>(\$425.00)</i>
Total owing to Landlord	\$1,088.54

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,088.54** 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 07, 2019

Residential Tenancy Branch