



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The landlord's agent A.M. (herein referred to as "the landlord") appeared at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed with the landlord that although tenant S.W. and occupant J.P. were listed as tenants on page one of the tenancy agreement, only tenant S.W. had signed the tenancy agreement. Therefore, I informed the landlord that the claim would only be proceeded with against tenant S.W. in this matter. As such, I amended the landlord's application to remove occupant J.P. as a named party.

The tenant S.W. did not attend this hearing, although I left the teleconference hearing connection open until 11:31 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also

confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing and the landlord's evidence. The landlord testified that the tenant S.W. was served with the landlord's notice of this hearing and evidence by Canada Post registered mail on June 27, 2019, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord testified that the package was sent to the forwarding address verbally provided by the tenant when the tenant met with the landlord at the rental unit to collect belongings that had been left behind at the rental unit after the tenant vacated the unit. I note that the landlord's "Statement of Events" documentary evidence indicated that this took place on June 13, 2019. During the hearing, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was signed for as received by tenant S.W. on July 4, 2019.

I confirmed with the landlord that the evidence submitted to the tenant consisted of some documentary evidence as well as digital photographic evidence provided on a usb key in the package. The landlord confirmed that she did not submit a completed "Digital Evidence Details" form RTB-43 as required by Rules 3.10.1, 3.10.2, 3.10.3, 3.10.4 and 3.10.5 of the Residential Tenancy Branch Rules of Procedure. Therefore, I informed the landlord that I would not consider any of the submitted digital evidence.

Therefore, I find that tenant S.W. was served with the notice of this hearing and the landlord's documentary evidence only on July 4, 2019 in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The landlord confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began November 9, 2018, with a scheduled end date of November 30, 2019.
- Monthly rent of \$1,050.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$525.00.
- A move-in condition inspection report was completed and signed by both parties.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent in May 2019, with an effective vacancy date on the notice of June 3, 2019.

The landlord obtained an Order of Possession through an ex-parte Direct Request hearing decision rendered on June 17, 2019 (file number noted on cover sheet of this Decision). I note that the landlord also obtained a Monetary Order for rent owed for May 2019 in the amount of \$1,050.00 through the June 17, 2019 decision.

For the current application before me, the landlord submitted a Monetary Order worksheet setting out the landlord's claim for rekeying the lock, carpet cleaning, cleaning and repairs, and unpaid rent for the month of June 2019.

The landlord testified that the tenant vacated the residence at the beginning of June 2019 but was not sure of the exact date as the tenant did not advise the landlord of their move out date and left belongings behind. The landlord rekeyed the locks on June 6, 2019 and conducted the move-out inspection without the tenant on that date. A copy of the move-out inspection report was submitted into evidence by the landlord, which noted the condition of the rental unit as "dirty", with food left in the refrigerator, large holes in the living room wall from the TV, and large holes in stairwell from a gate "ripped" from the wall.

The landlord confirmed that the rental unit had been last painted two years ago.

The landlord testified that they were unable to rent out the unit in June 2019 as the landlord awaited the Direct Request decision to obtain an Order of Possession and the tenant did not confirm when they would be moving out. Therefore, the landlord claimed unpaid rent of \$1,050.00 for the month of June 2019.

In support of their claim, the landlord submitted into evidence receipts for the cleaning and repair costs claimed on the Monetary Order worksheet.

Although the landlord claimed that they no longer held the tenant's security deposit, I note that the landlord's Application for Dispute Resolution seeks to recover part of the unpaid rent of \$1,050.00 for June 2019 by holding the security deposit. Further, the landlord's prior Monetary Order for unpaid rent for May 2019 was not set off against the security deposit. Therefore, in this matter, I have considered any claims for monetary compensation made by the landlord to be set off against the security deposit paid by the tenant at the beginning of the tenancy, in accordance with section 72(2)(b) of the *Act*.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for unpaid rent, cleaning and damages, and rekeying the locks. I have addressed my findings on each of these heads of claim separately, based on the testimony and evidence presented, on a balance of probabilities, as follows:

1) Unpaid Rent

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenants to pay \$1,050.00 in monthly rent. As such, based on the testimony and evidence before me, on a balance of probabilities, I accept the sworn testimony of the landlord that the tenant did not vacate the rental unit until the beginning of June, and failed to provide notice to the landlord of when they intended to vacate the rental unit, and as such, the landlord was unable to re-rent the unit for the month of June 2019.

Therefore, I find the landlord is entitled to a monetary award of \$1,050.00 for rental revenue loss for June 2019.

2) Cleaning and Damages

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the evidence submitted by the landlord in support of their claim, which included move in and move out condition inspection reports and receipts for carpet cleaning, cleaning costs, and repair/painting costs, I find that there is sufficient evidence that the tenant caused damage beyond reasonable wear and tear and failed to leave the rental unit reasonably clean. Therefore, I find that the claimant has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party, and the claimant has provided sufficient evidence to establish the monetary amount of the damage or loss from the submitted receipts.

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the

age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

As the landlord testified that the rental unit was last painted two years ago, I have allocated 50% as the percentage of replacement cost for paint/paint supplies attributable to the tenant, based on Policy Guideline 40, which provides that paint has a useful life of four years.

Therefore, I find that the landlord is entitled to a monetary claim for cleaning and damages of \$601.90.

3) Rekeying Lock

The landlord testified that the tenant failed to return the rental unit keys, and therefore the landlord rekeyed the locks.

Section 25 of the *Act* sets out that it is the landlord's responsibility regarding rekeying locks, as follows:

Rekeying locks for new tenants

- 25 (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

This is further explained in Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which sets out the responsibilities for landlords and tenants regarding maintenance, cleaning, and repairs of residential property. Paragraph 6, under the section titled “Security”, states:

6. *The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a*

residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

In this case, the tenant did not damage the lock, rather the landlord needed to rekey the lock as the tenant abandoned the rental unit and failed to return the keys. The *Act* and Policy Guideline 1 are clear that in cases other than damage caused by the tenant, the landlord is responsible for all costs related to rekeying or otherwise altering the locks so that keys given to the previous tenant do not give access to the rental unit. Given the landlord would otherwise have had to rekey the lock prior to a new tenancy, the landlord has saved themselves from this cost as they rekeyed the lock at the end of this tenancy. Therefore, the landlord cannot apply this cost to the tenant, regardless of the tenant's failure to return the keys, since the landlord would otherwise have had to bear this cost. Therefore, I decline the landlord's request for reimbursement for this expense.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$1,651.90 for compensation and damages as follows:

Item	Amount
Unpaid rent for June 2019	\$1,050.00
Carpet cleaning costs	\$173.25
Painting costs (50% of \$160.00 + \$97.31)	\$128.65
Cleaning costs	\$300.00
Total Monetary Award to Landlord for Damages Claim	\$1,651.90

As explained earlier in the "Background and Evidence" section of this Decision, I find that the landlord's Application seeks to set off holding the tenant's security deposit against the claims for monetary compensation. Therefore, in accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$1,651.90, against the tenant's security deposit of \$525.00, in partial satisfaction of the total monetary award in favour of the landlord.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$1,226.90.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$1,651.90
Recovery of the filing fee from the tenants	\$100.00
LESS: Security deposit held by landlord	(\$525.00)
Total Monetary Order in Favour of Landlords	\$1,226.90

Conclusion

I order the landlord to retain the \$525.00 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation for unpaid rent and damages.

I issue a Monetary Order in the landlord's favour against the tenants in the amount of \$1,226.90 in satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

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 28, 2019

Residential Tenancy Branch