



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Lakeside Realty Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act for the recovery of the \$566.00 she paid in rent for May 2019; for the return of her \$325.00 security deposit, and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that the property management company named in the tenancy agreement represents the owner, so I have amended the Respondent's name in the Application from that of the Agent to the property management company, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed and the tenancy agreement states that the fixed term tenancy was scheduled to begin on May 1, 2019, and was to run to October 31, 2019, with a monthly rent of \$650.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$325.00, and no pet damage deposit. The Parties agreed that the Tenant paid a reduced rent of \$566.00 in May, because she was not willing to move into the rental unit on May 1st given the need for repairs and cleaning.

The Tenant said she walked through the rental unit with the Landlord's Agent before signing the tenancy agreement. The Tenant said she saw items needing repair and cleaning, which she said the Agent assured her would be completed by the time the Tenant moved in on May 1, 2019.

The Tenant said she was disappointed when she arrived to move in:

I realized the cleaning was not done and there was an unpleasant situation in the property, which was not the Landlord's fault. I phoned the Residential Tenancy Branch and they quoted section 45(3) of the *Residential Tenancy Act*. If it's not clean and sanitary, I have a right to vacate, if I do it in writing. The regulations would apply, and I would be refunded accordingly. I quoted that in my letter to [the Agent] in her role as property manager.

The cleaning and repairs required were not done, and the shower stall, the stove and floors were unacceptable. [The Agent] came once and on May 11 she said that the cleaning would be done but it wasn't – it wasn't done by 13th. I removed last of my tubs and noticed that cleaning and repairs had not been done. One day notice in writing, one day notice is sufficient to end my tenancy.

On the 12th, I left my notice of intent to vacate – a verbal message with the receptionist.

[emphasis added]

The Agent said:

When a tenant vacates without giving 30 days' notice, we try to re-rent the unit before the end of the month. – like June 1 in this case. I would have given back her security deposit, because we have no reason to keep it.

I agreed that we signed the tenancy agreement on the first, and because she was a friend's ex mother-in-law we negotiated the price to \$650.00. I said she could pro rate the rent, if she could give us four days to clean and paint walls, and do some repairs. I would give her four days free of rent. That's why it's pro-rated for May, instead of the full \$650.00.

As far as her leaving, she got in a dispute with her nephew; that's why she's actually leaving. I had talked to her and she complained about the noise and cleanliness of the suite. I said I'd be there on Thursday [the 16th] and clean whatever she was dissatisfied with, and the air conditioner man would be there on Monday [the 13th].

The homeowner had been there on the 2nd. The previous tenant said they had cleaned everything. I wanted to give the previous tenant an opportunity to make it right before taking anything off the security deposit. I got a message from her saying she had cleaned it. There was not a word that it was still not up to [the Tenant's] satisfaction. On Saturday, May 11, she called me to complain. I said I would be there Thursday to clean. The repairman was there on Monday to fix the air conditioner.

The Tenant said she returned the keys to the Landlord on May 13, 2019 and gave the Landlord her forwarding address in a letter dated May 23, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

May 2019 Rent Paid

As set out in section 16 of the Act, "The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." [emphasis added]

Landlords and tenants' rights and obligations for repairs and cleaning are set out in sections 32 and 37 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

. . .

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In terms of the previous tenant's responsibilities, section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged". [emphasis added]

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

In terms of the Tenant's notice to end the fixed tenancy, section 45 of the Act states:

Tenant's notice

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a **material term** of the tenancy agreement and has not corrected the situation within a **reasonable period** after the tenant gives **written notice** of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

In her Application, the Tenant stated:

From May 3rd to May 11th I monitored and still found the cleaning inadequate and the suite uninhabitable. I notified [the Agent] and she said she would clean by Thursday 16th. I never actually moved into the suite as it was never cleaned properly. I did however, place 4 tubs of my possessions in the suite and slept there the night of May 12th when I was attacked by a guest staying in the basement suite of the same property address. I notified [the Agent] of my intent to end tenancy due to insufficient cleaning and dangerous clientele in the complex. I phoned the Residential Tenancy Office and was told to quote Section 45, Subsection 3 to request full rebate.

The Tenant said "the shower stall and floors were unacceptable, and the stove"; however, she did not submit any photographs of the condition of the rental unit.

In her Application, the Tenant stated:

[The Agent] and I had a conversation between May 3 and 11th. I noted that the

painting and wall repairs were done, but the cleaning was not done. The floors and the shower stall – I found a rusty bobby pin in the shower stall. And grime and muck – it was unsanitary – not cleaned by May 11th. The floors – if you walk with white socks on, you could see how dirty they were. The previous tenant had painted the floors. . . . that needs to be stripped, this is unacceptable. The cleaning was not done as of the evening of May 11th. The air conditioner still sounded like a 747 or it didn't work at all. The air conditioner repair man was there and said he would come back, but that it may have to be replaced. [The Agent] said she felt I left because I didn't want to be there. I was assaulted, that's not a dispute. The cleaning was not done. The door lock was defective, there was no fire escape, but mainly because it was not clean, and the repairs were not done. No window blind functioned. I felt it was an ongoing problem and that I wasn't prepared to deal with that, the noise of the air condition and other tenants. It was unsanitary and uninhabitable.

As of May 13th, the cleaning and the rest of the repairs had not advanced. It was the middle of the month and people were not honouring their word.

May has 31 days, which I find means that May 16 is the middle of May. Further, the Tenant acknowledged that the Landlord did not charge her for the first four days.

The Tenant did not indicate that the level of cleanliness or repairs were material terms of the tenancy agreement; further, there is no evidence before me that she gave the Landlord written notice of the needed cleaning and repairs, as required by section 45(3) of the Act. This is despite the Tenant's acknowledgment that the RTB had advised her to consider section 45(3) of the Act. Further, in her letter to the Agent dated May 23, 2019, the Tenant said "...none of our communications were done in writing as they should have legally been...". I find from the evidence before me that the Parties had discussed the situation and had agreed that the Agent would attend the rental unit to clean and repair it to the Tenant's satisfaction on Thursday, May 16th. The Tenant acknowledged that a repair person had attended the rental unit to initiate the repair of the air conditioner. I find that the needed repairs and cleaning were underway, as agreed to by the Parties.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord, other than the

amount she had already deducted, as agreed between the Parties. Further, I find the Tenant did not give the Landlord reasonable opportunity to meet the Tenant's requirements. Also, based on both Parties' testimony in the hearing, I find it more likely than not that the Tenant abandoned the rental unit and the tenancy agreement in part, because of a dispute with a family member who was also living in the residential property, which the Tenant acknowledged was not the Landlord's fault. The Tenant moved out the day after she said she was assaulted by this person.

Based on the evidence before me overall, I find that the Tenant's claim for recovery of the rent paid in May 2019 does not comply with her obligations under section 26. I also find that the Tenant did not comply with the notice requirements of section 45 of the Act. As such, I dismiss the Tenant's claim for recovery of the rent she paid for May 2019, without leave to reapply.

Security Deposit

I find that the Tenant mailed her forwarding address to the Landlord on May 23, 2019. Pursuant to section 90 of the Act, this was deemed received by the Landlord on May 28, 2019. I find that the tenancy ended on May 13, 2019, when the Tenant gave the Landlord the keys and abandoned the property. Section 38(1) of the Act states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$325.00 security deposit within fifteen days after May 28, 2019, namely by June 12, 2019, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlord

has provided no evidence that they returned any amount or made an RTB application to claim against the deposit. Therefore, I find the Landlord failed to comply with their obligations under Section 38(1).

Since the Landlord has failed to comply with the requirements of Section 38(1), and pursuant to section 38(6)(b) of the Act, I find that the Landlord must pay the Tenant double the amount of the \$325.00 security deposit or \$650.00. There is no interest payable on the security deposit. I award the Tenant with \$650.00 in this regard.

Given the Tenant's partial success in her Application, I also award her recovery of the \$100.00 Application filing fee. Pursuant to section 67 of the Act, I award the Tenant with a monetary order of **\$750.00**.

Conclusion

The Tenant is unsuccessful in her claim for recovery of the rent she paid for May 2019, as I found that the Landlord was not in breach of their duties under the legislation or tenancy agreement. The Tenant's claim for recovery of the security deposit she paid the Landlord is successful in the amount of \$650.00, as the Landlord breached their obligations under section 38 of the Act. The Tenant is also awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **\$750.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 23, 2019

Residential Tenancy Branch