



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 30, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were sent by registered mail to the Tenant's forwarding address on August 15, 2019. The Landlord testified that the Tenant provided the Landlord with her forwarding address by text message. This was not submitted in evidence.

The Landlord submitted the customer receipt for the package with Tracking Number 1 on it. The Landlord also submitted the Canada Post website information in relation to the package which shows notice cards were left August 19, 2019 and August 26, 2019 in relation to the package. The website information shows the package was unclaimed and returned.

The Application originally named T.S. as a respondent. The Landlord testified that she did not serve the hearing package on T.S. as she did not have a forwarding address for T.S. The Landlord testified that T.S. does not live with the Tenant.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I find the Tenant was served in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). The Tenant is not permitted to avoid service by failing to pick up the registered mail package. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package August 20, 2019. I find the package was served in enough time to allow the Tenant to prepare for, and appear at, the hearing.

T.S. was not served with the hearing package and did not attend the hearing. Given this, I have removed T.S. from the style of cause and did not permit the Landlord to proceed against T.S.

As I was satisfied of service in relation to the Tenant, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Rubbish removal	\$294.00
2	Extension cord	\$33.59
3	Move-out clean up	\$450.00
	TOTAL	\$777.59

A written tenancy agreement was submitted as evidence. It is between the Landlord, T.S. and Tenant in relation to the rental unit. The tenancy started July 01, 2017 and was for a fixed term ending June 30, 2018. It then became a month-to-month tenancy.

Rent was \$1,800.00 due on the first day of each month. The tenants paid a \$900.00 security deposit. The agreement is signed by all three parties.

The tenancy agreement includes a one-page addendum signed by all three parties. Term one states:

The tenants are liable for all wilful damage and damage through negligence to property, and will keep premises reasonably clean and clear of all refuse and garbage. Any misuse or abuse of equipment and property shall be paid by the tenants. The tenants are responsible for cleaning up the premises prior to vacating.

The Landlord testified as follows.

The tenancy ended June 30, 2019. T.S. never provided a forwarding address. The Tenant provided her forwarding address by text message July 12, 2019.

The Landlord did not have an outstanding monetary order against the tenants at the end of the tenancy. The tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The tenants initially agreed to the Landlord keeping some of the security deposit by text but then changed their mind. This text is not in evidence.

The Landlord still holds the entire \$900.00 security deposit.

The parties did an informal walk-through at the start of the tenancy. No condition inspection report was done.

No move-out inspection was done. The parties agreed to do an inspection, but it did not happen because the tenants had not moved all their belongings out. The tenants were not offered an opportunity to do the inspection on the RTB form. No condition inspection report was done.

The Landlord testified as follows in relation to the compensation sought.

Rubbish removal

The tenants left items such as a mattress, Christmas tree and trampoline at the rental unit upon vacating. The photos submitted show the items left at the rental unit. The Landlord had to have someone attend and clean out the items left behind. A receipt for this was submitted.

The Landlord submitted a receipt for payment of \$294.00 to a rubbish removal company.

Extension cord

An extension cord was provided to the tenants at move-in. T.S. took the extension cord with him when he moved out. A receipt for purchasing a new extension cord has been submitted.

The Landlord submitted a receipt for a purchase of \$33.59 from a hardware store.

Move-out clean up

The tenants did not clean the rental unit at all when they vacated. The tenants just left. There was dirt and debris left in the rental unit. The amount sought is for cleaning the rental unit. The photos show the state of the rental unit. The invoice for the cleaning was submitted. The dump fee referred to on the invoice is for the belongings left inside the rental unit.

The Landlord submitted an invoice for the cleaning showing it cost \$35.00 per hour for each of two staff and took six hours for a total of \$420.00. The invoice shows an additional dump fee and truck charge.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

- (1) If a...tenant does not comply with this Act...the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the Landlord about the move-in and move-out inspections, I do not find this is a situation where the tenants were offered two opportunities to do these inspections but refused to participate. I find the tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

The Landlord testified that a condition inspection report was not completed on move-in or move-out. I find the Landlord extinguished her right to claim against the security deposit for damage to the rental unit pursuant to sections 24 and 36 of the *Act*.

Based on the undisputed testimony of the Landlord, I accept the tenancy ended June 30, 2019. Based on the undisputed testimony of the Landlord, I accept the Tenant provided her forwarding address by text message July 12, 2019. Although providing a forwarding address by text message will not always be sufficient, I find it sufficient here as the Landlord acknowledged receiving it and did not take issue with the way in which the forwarding address was provided.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit in full or claim against it within 15 days of July 12, 2019, the date she received the Tenant's forwarding address. I note that the Landlord had extinguished her right to claim against the security deposit for damage and therefore could only claim against the security deposit for something other than damage to the rental unit. Regardless, the Landlord filed the Application July 30, 2019, outside of the 15-day time limit. Therefore, the Landlord did not comply with section 38(1) of the *Act*.

I note that there are exceptions to section 38(1) of the *Act* set out in sections 38(2) to 38(4) of the *Act*. However, based on the Landlord's testimony set out above, none of these exceptions apply.

Given the Landlord did not comply with section 38(1) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the deposit pursuant to section 38(6) of the *Act*. Therefore, the Landlord must return \$1,800.00 to the Tenant.

The Landlord is still entitled to claim for compensation and I consider that now.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

(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...

Rubbish removal

Based on the undisputed testimony of the Landlord and photos, I accept that the tenants left items behind when they vacated the rental unit. I find the tenants breached section 37 of the *Act* by failing to leave the rental unit reasonably clean.

Based on the undisputed testimony of the Landlord and photos, I accept that the Landlord had to have someone attend and remove the items from the rental unit and property. Based on the undisputed testimony of the Landlord and the receipt, I accept that this cost \$294.00. Based on the undisputed testimony of the Landlord and photos, I

find this amount to be reasonable given the number of items and the nature of the items left behind.

The Landlord is entitled to the \$294.00 sought.

Extension cord

Based on the undisputed testimony of the Landlord, I accept that the tenants were provided an extension cord on move-in and took this upon move-out. There was nothing about the Landlord's testimony that caused me to question the reliability or credibility of this. I accept that the tenants were not permitted to take items provided as part of the tenancy. I consider this damage. I also find term one of the addendum somewhat applicable to this issue. I am satisfied the tenants breached section 37 of the *Act* and term one of the addendum.

Based on the undisputed testimony of the Landlord, I accept that she replaced the extension cord. Based on the undisputed testimony of the Landlord and receipt, I accept that this cost \$33.59. I find this amount reasonable.

The Landlord is entitled to the \$33.59 sought.

Move-out clean up

Based on the undisputed testimony of the Landlord and photos, I accept that the tenants did not clean the rental unit upon vacating. Based on the undisputed testimony of the Landlord and photos, I accept that the tenants left dirt and debris in the rental unit. Based on the photos, I accept that the tenants failed to leave the rental unit reasonably clean and therefore breached section 37 of the *Act*.

Based on the photos, I accept that the Landlord had to have the rental unit cleaned. Based on the undisputed testimony of the Landlord and invoice, I accept that this cost \$420.00. Based on the photos showing the state of the rental unit, I accept that this amount is reasonable.

The Landlord is entitled to the \$420.00 sought.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Rubbish removal	\$294.00
2	Extension cord	\$33.59
3	Move-out clean up	\$450.00
4	Filing fee	\$100.00
	TOTAL	\$877.59

As stated, the Landlord must return \$1,800.00 to the Tenant as double the security deposit. However, the Tenant owes the Landlord \$877.59. Therefore, the Landlord is only required to return \$922.41 to the Tenant. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$877.59. However, the Landlord must return double the security deposit to the Tenant which equals \$1,800.00. Taking the amount of compensation owed into account, the Landlord must return \$922.41 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return \$922.41 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 Act.

Dated: November 22, 2019

Residential Tenancy Branch