



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding Package and evidence sent by Canada Post registered mail. The tenant testified that he did not serve the landlord with his evidence.

Rule 3.16 of the Residential Tenancy Branch Rules of Procedure requires that the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the *Act* and these Rules of Procedure.

As the tenant did not serve the landlord with his evidence, I have not considered the tenant's submitted documentary evidence in this matter, however I allowed the tenant to provide his verbal testimony related to his evidence during the hearing.

Based on the undisputed testimonies of the parties, I find that the tenant was served with the notice of this hearing and the landlord's evidence in accordance with the Rules of Procedure and sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover 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 in accordance with the Rules of Procedure and the *Act*, 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.

The parties confirmed there had been a prior tenancy agreement however due to a change in some of the terms of the tenancy, the parties entered into a new written tenancy agreement, which is allowable under the *Act*. A copy of the written tenancy agreement was submitted into documentary evidence by the landlord, confirming that this tenancy began January 1, 2019. In section 2 of the tenancy agreement, following the start date of the tenancy, check box A is checked off, which states:

A) and continues on a month-to-month basis until ended in accordance with the Act.

I further note that section 3 of the tenancy agreement an amount of \$1,200.00 for the rent amount and the box for "month" is checked off for payment of rent. The \$1,200.00 has a line crossed through it and \$625.00 bi-weekly hand-written above it and initialed by the parties. There is a "1st" entered in the box for the day rent is payable and the box for "month" is checked off.

The tenant testified that he had originally requested the rent to be paid bi-monthly, however the landlord recorded in the tenancy agreement the rent to be paid bi-weekly, and the tenant acknowledged he just accepted that. Therefore, the parties confirmed

that rent of \$625.00 was paid by the tenant bi-weekly, which meant the rent payment date varied. The parties confirmed that a \$600.00 security deposit and a \$600.00 pet damage deposit were paid by the tenant at the beginning of the tenancy and continued to be held by the landlord.

The tenancy ended on August 11, 2019 when the tenant vacated the rental unit and returned possession to the landlord.

The landlord testified that she accepted the tenant's notice to end tenancy, which consisted of an emailed picture of a written notice to end tenancy from the tenant, on July 22, 2019. The written notice from the tenant stated that August 19, 2019 would be the last day of tenancy and provided a move out date of "Aug 09–11 2019".

The landlord claimed damages for the cost of replacing the mailbox key, the rental unit door deadbolt lock, and cleaning of the rental unit.

The landlord claimed that she had to replace the mailbox at a cost of \$100.00 as the tenant lost the key. The tenant acknowledged that he had lost his keys, including the mailbox key.

The landlord testified that she replaced the rental unit deadbolt lock at the end of the tenancy as the tenant lost the keys. The landlord confirmed that she did not change the locks again at the beginning of the new tenancy of her current tenant.

The parties confirmed that a condition inspection report was completed by the parties at the beginning and end of the tenancy, however the landlord did not submit a copy of the report into evidence to support her claim. The tenant testified that the landlord signed off on the condition inspection report that the place was clean.

The landlord claimed that the tenancy was a monthly tenancy and as such the tenant's notice would not take effect until the end of August 2019, requiring the tenant to pay rent for the month of August 2019. The tenant disputed this and claimed that the tenancy was a bi-weekly tenancy requiring him to only provide two weeks notice. The parties confirmed that the tenant paid rent up to August 10, 2019, as such the landlord was claiming rental revenue loss for the last 3 weeks in August 2019.

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*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As the onus for proving a claim for damages is on the party seeking compensation, in this matter, the landlord must prove their claim on a balance of probabilities.

1) Claim for Replacement Mailbox Key

The tenant acknowledged he had lost the mailbox key. The landlord submitted documentary evidence from the strata confirming the cost of the mailbox key replacement of \$100.00 plus tax. Section 7 of the *Residential Tenancy Regulation* allows a landlord to charge a non-refundable fee for the cost of replacing keys. As such, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant is responsible for the cost of replacing the mailbox key of \$100.00. Therefore, the landlord is entitled to a monetary award for this amount.

2) Claim for Replacement of Rental Unit Deadbolt

The landlord replaced the rental unit lock at the end of the tenancy due to the fact the tenant lost the keys. However, the landlord confirmed that she did not replace the locks again, prior to re-renting the rental unit to new tenants. Section 25 of the *Act* sets out the responsibility of the landlord for re-keying or otherwise altering the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit for the new tenant. Therefore, based on the testimony and evidence

presented, on a balance of probabilities, I do find that the landlord is entitled to a monetary award for the cost of replacing the deadbolt lock for the rental unit, as such the landlord's claim fails and is dismissed.

3) Claim for Cleaning Costs

Section 37(2)(a) of the *Act* provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 21 of the *Residential Tenancy Regulation* sets out the evidentiary significance of the condition inspection report, as follows:

Evidentiary weight of a condition inspection report

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 case, although a written condition inspection report was prepared, the landlord failed to submit it into documentary evidence. The tenant testified that the landlord had signed off on the report that the rental unit was clean. The only evidence of the condition of the rental unit submitted by the landlord was four black and white pictures, which I do not find to provide a preponderance of evidence to support the landlord's claim that the tenant was responsible for \$252.00 of cleaning costs.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find do not that the landlord submitted sufficient evidence that the tenant contravened section 37(2) of the *Act*, as such the landlord's claim fails and is dismissed.

4) Claim for Unpaid Rent

Pursuant to section 45 of the *Act* a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and 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.

Serving a notice to end tenancy by text message is not an acceptable method of service. In this matter, the landlord testified that she accepted the tenant's notice to end tenancy emailed to her on July 22, 2019.

Based on the written tenancy agreement submitted into evidence, I find that the tenancy operated on a monthly basis, and therefore, as required by section 45 of the *Act*, the notice could not take effect earlier than one month from the date the notice was given to the landlord. Further, I find that rent was payable bi-weekly, and as such the rent payment date varied. According to the evidence submitted by the landlord, the tenant paid rent on July 27, 2019 to cover the following two weeks up to August 10, 2019. Had the tenancy continued, August 24, 2019 would have been the next day that rent was payable. As such, to meet the requirements of section 45 of the *Act*, I find that the earliest date the tenant was able to end the tenancy was August 23, 2019 as that was the day before the day in the month that rent was payable under the tenancy agreement and was not earlier than one month after the date the landlord received notice to end tenancy. Therefore, I find that the tenant was obligated to pay rent until August 23, 2019.

As such, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant is responsible for rent for the two-week period of August 10 to August 23, 2019, equivalent to \$625.00. Therefore, the landlord is entitled to a monetary award for this amount.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$725.00 for damage or loss. As the landlord was successful in obtaining a monetary award from their Application, I find that the landlord is entitled to the cost of the filing fee of \$100.00, for a total monetary award of \$825.00.

The landlord filed an Application for Dispute Resolution on August 21, 2019 to claim damages and to retain the \$600.00 security deposit and \$600.00 pet damage deposit in satisfaction of these claims. The landlord confirmed she received the tenant's forwarding address on August 11, 2019. As such, I find that the landlord applied to retain the deposits in accordance with the allowable 15-day time limit provided by section 38 of the *Act*.

In accordance with section 72 of the *Act*, I set-off the \$1,200.00 deposits held by the landlord against the \$825.00 in monetary compensation awarded to the landlord. Therefore, the landlord is ordered to return \$375.00 to the tenant for the amount of the deposits exceeding the compensation awarded to the landlord, as the landlord has no entitlement to this amount of the deposit.

As an enforcement of this order, I issue a Monetary Order in the tenant's favour of \$375.00.

Conclusion

I order the landlord to return the deposit amount of \$375.00 to the tenant forthwith. As an enforcement of this order, I issue a Monetary Order to the tenant in the amount of \$375.00.

The tenant is provided with this Order in the above terms. Should the landlord fail to comply with this Order, the tenant is required to serve this Order on the landlord and this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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: December 18, 2019

Residential Tenancy Branch