



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 5, 2019 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on September 6, 2019. A registered mail tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the Canada Post online registered mail tracking website the registered mail package was unclaimed and eventually returned to the sender.

Section 90 of the Act states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find that the tenant was deemed served on September 11, 2019 with the Notice of Hearing, application and documentary evidence. As the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in

accordance with Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matters

Firstly, the landlord was advised that due to the Monetary Order Worksheet (MOW) served on the RTB and the tenant in the amount of \$5,090.98 not matching the claimed amount of \$7,090.98, and considering that the landlord was unable to specifically break down how they arrived at the extra \$2,000.00 listed on the application, that I found that it would be prejudicial to the tenant to proceed with any amount higher than the \$5,090.98 listed on the MOW. Therefore, in the interests of conducting a fair hearing, the landlord stated that they wanted to proceed with the \$5,090.98 amount listed on the MOW and I dismiss the remaining \$2,000.00 due to insufficient particulars, without leave to reapply.

Secondly, the landlord confirmed the email addresses of the landlord and tenant during the hearing. The landlord also confirmed their understanding that the decision would be emailed to both parties. Any resulting monetary order, if applicable, will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord testified that the tenant signed two fixed-term tenancy agreements. The landlord confirmed that they neglected to submit the first tenancy agreement; however, they did submit the second fixed-term tenancy agreement. The landlord testified that monthly rent was \$2,200.00 during the tenancy and was due on the first day of each month. The landlord stated that the tenant paid a security deposit of \$1,050.00 at the start of the tenancy, which the landlord continues to hold.

The landlord testified that the tenant vacated the rental unit on June 30, 2019. The landlord stated that the tenant did not provide their forwarding address in writing as required by the Act. The landlord filed their application on August 28, 2019.

The landlord's monetary claim of \$5,090.98 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Electrical bill	\$205.42
2. Rent and unpaid hydro	\$3,103.45
3. Negligent infestation (fumigation)	\$357.00
4. Cleaning	\$745.50
5. Toilet replacement	\$571.63
6. Light bulbs (replaced burned out bulbs)	\$35.59
7. Extra roach killing sprays and traps	\$72.39
TOTAL	\$5,090.98

Regarding item 1, the landlord has claimed \$205.42 for an unpaid electrical bill. The landlord presented the tenancy agreement, which confirms that heat and electricity were not included in the monthly rent. The landlord also provided a copy of the electrical bill in evidence.

Regarding item 2, the landlord has claimed \$3,103.45 for unpaid rent as described in a series of text messages between the parties submitted in evidence. On the June 19, 2019 entry at 1:32 p.m., the landlord reminds the tenant that the current balance owing for unpaid rent and unpaid utilities (not including the utilities in item 1 above), is \$3,103.45. The landlord stated that the tenant failed to pay any amount of the \$3,103.45 claimed.

Regarding item 3, the landlord has claimed \$357.00 to fumigate the rental unit as the tenant left piles of pizza boxes in the rental unit and the invoice submitted in evidence for \$357.00 supports that there was "very heavy activity" of roaches, which required treatment.

Regarding item 4, the landlord has claimed \$745.50 for cleaning costs. The landlord testified that the tenant failed to clean the rental unit before vacating and submitted a cleaning invoice dated July 3, 2019 in support of the amount claimed. The invoice indicates 8 hours at \$45.00 per hour, plus \$80.00 in materials, and 4 hours at \$45.00 for

sanitization in the kitchen cabinets, floors, doors, two bathrooms, laundry machine, dryer machine, dishwasher and stove. In addition, the invoice states \$90.00 for garbage disposal. The landlord presented many colour photos in evidence, which the landlord stated supports that the tenant left the rental unit in a dirty condition, which required the cleaning costs suffered by the landlord.

Regarding item 5, the landlord has claimed \$571.63 to replace a damaged toilet that the landlord stated broke due to the tenant either dropping something on it or something from the wall dropping onto the toilet. The landlord also stated that the toilet was a special elongated toilet and that a top cover was not available, so the entire toilet had to be replaced. Photos submitted in evidence support that the toilet was damaged beyond repair. In addition, a receipt for the amount claimed was submitted in evidence.

Regarding item 6, the landlord has claimed \$35.59 for the cost to replaced burned out light bulbs at the end of the tenancy. The landlord testified that there were so many burned out light bulbs that the tenant should have replaced during the tenancy, that they must have been living in the dark by the end of the tenancy. The landlord also submitted a copy of a receipt in the amount of \$35.59 in support of this portion of their claim.

Regarding item 7, the landlord has claimed \$72.39 for the cost of roach killing supplies that the landlord stated were not effective and eventually led to the hiring of a professional exterminator, which was item 3 listed above. The landlord submitted a receipt in support of this claim and stated that they suffered a loss attempting to do the job themselves, which was not sufficient to treat the heavy roach activity caused by the tenant's food boxes and dirty living conditions in the rental unit.

Analysis

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

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

[Emphasis added]

In addition, section 45(2) of the Act applies and 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.

[Emphasis added]

Furthermore, section 37(2) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[Emphasis added]

Based on the above, I find the tenant breached sections 26, 45(2), and 37(2) of the Act by failing to pay rent as required and I find the tenant was not entitled to end the tenancy earlier than August 31, 2019 as that was the scheduled end date of the second fixed term tenancy agreement as stated by the landlord. Furthermore, I find the tenant left the rental unit very dirty and infested with roaches contrary to section 37(2) of the Act. As a result, I find the landlord's application is fully successful in the amount of

\$5,190.98 as indicated in the table above, which also includes an additional **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Pursuant to section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit of \$1,050.00, which has not accrued any interest to date, I grant the landlord authorization to retain the tenant's full \$1,050.00 security deposit plus \$0.00 in interest, to offset the \$5,190.98 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenant to the landlord in the amount of **\$4,140.98**.

I caution the tenant not to breach sections 26, 45(2) and 37(2) of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$5,190.98 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$1,050.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$4,140.98. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above.

This decision will be sent by email to both parties. The monetary order will be sent by email to the landlord only for service on the tenant.

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: January 15, 2020

Residential Tenancy Branch