



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNDL-S MNRL-S FFT MNSD

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of double the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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

The landlord confirmed receipt of the tenant’s application for dispute resolution dated September 30, 2019 and evidence. Based on the testimony I find that the landlord was served with the tenant’s materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served the tenant with their application for dispute resolution dated August 27, 2019 and evidence by registered mail sent to the forwarding address provided by the tenant on or about August 28, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. The tenant disputed that they were served with the landlord’s materials. While the tenant submits that they did not receive the landlord’s materials, I find that the landlord has provided a valid Canada

Post tracking number and evidence that the materials were served at a forwarding address provided by the tenant in a manner consistent with the *Act*.

While the deemed service provisions of the *Act* are rebuttable, I find that the tenant's testimony disputing service is insufficient to rebut the deemed service provision. The landlord provided evidence of their service on the tenant and I find the tenant's statement disputing service is merely contradiction and not a cogent disputation of service.

Based on the evidence I find that the tenant is deemed served with the landlord's materials on September 2, 2019, five days after mailing in accordance with sections 88, 89 and 90 of the *Act*, and in any case has been sufficiently served in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the deposits for this tenancy?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

This periodic tenancy began in March 2017. The monthly rent was \$1,150.00 payable on the first of each month. The tenant is also responsible for paying a portion of the utilities for the rental building. A security deposit of \$550.00 and pet damage deposit of \$550.00 were paid at the start of the tenancy and are still held by the landlord. The parties prepared a move-in condition inspection report at the start of the tenancy and a copy was submitted into evidence.

The parties agree that the tenant vacated the rental unit on April 1, 2019 and that the tenant first informed the landlord of their intention to end the tenancy on that date. The tenant submits that they had permission from the landlord to end the tenancy at any time without notice. The tenant provided the landlord with a forwarding address by email correspondence dated August 16, 2019.

The tenant did not attend a move-out condition inspection. The landlord submitted documentary evidence by way of a letter dated April 2, 2019 and a Notice of Final Opportunity for a Condition Inspection that they had provided the tenant with at least 2

opportunities to participate in a move-out inspection. The landlord submits that the rental unit required considerable repairs, cleaning and work after the tenancy. The landlord submitted into evidence copies of receipts and invoices showing that there was a cost of \$727.73 for various work performed.

The landlord seeks the equivalent of a month's rent as the tenant failed to provide notice to end the tenancy before vacating. The landlord also seeks the unpaid utilities for the tenancy in the amount of \$539.67. The landlord submitted into evidence copies of the utility invoices.

The tenant gave evidence that the exterior of the rental property was in a state of disarray at the start of the tenancy. The tenant testified that while they signed the move-in inspection report indicating that there were no issues, they discovered deficiencies and garbage when the seasons changed and snow melted away. The tenant did not provide an explanation as to why this gave rise to a right to leave the interior of the rental unit in disrepair at the end of their tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the parties agree that the tenant first provided a forwarding address on August 16, 2019. The landlord filed their application for authorization to retain the deposits on August 27, 2019 within the timeline set out in the *Act*.

Furthermore, I find that the landlord provided the tenant with two opportunities to schedule a move-out inspection in accordance with section 36 of the *Act*. I accept the documentary evidence that the landlord provided the tenant with multiple opportunities to schedule an inspection and that the tenant failed to respond. I find that the notices to schedule an inspection were served on the tenant in a manner consistent with the *Act* at the service address of the tenant. I find the tenant's submission that they had vacated to be of no concern as their address for service remained the rental unit until they had provided a forwarding address on August 16, 2019.

Based on the evidence I find that the landlord had complied with the *Act* and provided the tenant with two opportunities to participate in a move-out inspection and that the

tenant failed to participate on either occasion. As such I find that the tenant's right to a return of the deposits was extinguished pursuant to section 36(1) of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

A tenant must pay rent when it is due pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on April 1, 2019 the effective date of the end of tenancy was May 31, 2019. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00 on April 1, 2019. I accept the evidence of the parties that the tenant failed to pay the full rent on that date.

I accept the evidence of the parties that the tenant was responsible for paying a portion of the utilities for the rental property. I accept the evidence of the landlord that the total utility arrear for this tenancy is \$539.67.

The landlord submits that they mitigated their losses and are merely seeking the equivalent of one month's rent of \$1,150.00 and the actual utility arrear of \$539.67 for this tenancy.

I do not find the tenant's submission that they were authorized to terminate the tenancy with no notice to be reasonable, supported in documentary evidence or to be consistent with what an ordinary person would do. I find the tenant's submission to have little credibility and no basis.

I accept the landlord's evidence that the rental unit was left in disrepair by the tenant and they incurred losses to rectify the damage. I accept the evidence of the landlord that the cost of repairs, cleaning and garbage disposal to be \$727.73.

As the landlord was successful in their application they may recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,417.40 under the following terms:

Item	Amount
Unpaid Rent April 2019	\$1,150.00
Unpaid Utilities	\$539.67
Damages and Loss	\$727.73
Filing Fee	\$100.00
Less Security Deposit	-\$550.00
Less Pet Damage Deposit	-\$550.00
TOTAL	\$1,417.40

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: January 6, 2020

Residential Tenancy Branch