



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

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

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. 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 evidence.

The Landlord testified that the hearing package and evidence were sent by registered mail to the Tenant's address obtained from a prior RTB hearing. The Landlord provided File Number 1. The Arbitrator on File Number 1 deemed the Landlord to have received the Tenant's forwarding address on the Tenant's Application for Dispute Resolution for File Number 1. The Landlord testified that the package was sent October 07, 2019. The Landlord submitted evidence relating to the package showing Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows the package was unclaimed after notice cards were left October 08, 2019 and October 14, 2019.

Based on the undisputed testimony of the Landlord, evidence submitted and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package and evidence October 12, 2019, well before the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. 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 to the unit or property?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Door repair	\$100.00
2	Paint	\$61.59
3	Lock	\$42.55
4	Rent	\$740.00
5	Filing fee	\$100.00
	TOTAL	\$1,044.14

A written tenancy agreement was submitted as evidence. The tenancy started August 20, 2018 and was for a fixed term ending April 30, 2019. Rent was \$740.00 per month due on the first day of each month. The Tenant paid a \$370.00 security deposit and \$50.00 cleaning fee.

The Landlord testified that the Tenant vacated the rental unit March 31, 2019.

As stated, the Landlord was deemed to have received the Tenant's forwarding address in the decision on File Number 1. The Landlord did not know when she received the decision on File Number 1.

The Landlord testified as follows.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

Both parties did a move-in inspection August 23, 2018. A Condition Inspection Report (CIR) was completed and signed by both. She gave the Tenant a copy of the CIR personally within a day or so of the inspection.

The Landlord did a move-out inspection March 31, 2019. The Tenant was given opportunities to participate by text and in conversations; however, the Tenant just left at the end of the tenancy. The Landlord completed the CIR and signed it. A copy of the CIR was sent to the Tenant with the evidence package.

Door repair, paint, lock

The Landlord testified as follows. The Tenant broke the door to her bedroom during the tenancy. Photos of this are submitted. The Tenant said she had someone to repair it. The Tenant got a used door and D.S. was going to install it. The door was put on backwards. The Landlord told the Tenant the door had to be put on properly because it was banging another door when opened. The Tenant said she would take care of this; however, the Tenant vacated the rental unit before the repair was complete.

The Landlord further testified as follows. At the end of the tenancy, the door did not have a lock, was not painted and the door frame was cracked. The Landlord purchased paint. The Tenant had purchased a lock but not a new lock, so the Landlord purchased a new one. D.S. painted the door and put it on properly. D.S. then disappeared. Her husband ended up putting the lock on the door.

The Landlord pointed to the CIR and the notation about the door frame and door lock.

The Landlord provided receipts for the paint and lock.

The Landlord provided an invoice for work done by D.S. including work on the door.

The Landlord provided texts from the Tenant in which the Tenant states that she broke the door to her room and understands that she is financially responsible for replacing it.

Rent

The Landlord testified as follows. The Tenant ended the fixed term tenancy early. The Landlord received notice March 16, 2019 that the Tenant was moving out. The Tenant moved out March 31, 2019. The Tenant did not pay rent for April. The Landlord did not post the unit for rent immediately as the door had to be fixed. The unit was re-rented for December 2019.

The Landlord provided texts from the Tenant showing she gave notice March 16, 2019 and vacated the rental unit March 31, 2019.

Analysis

Security deposit and cleaning fee

The Landlord collected a \$370.00 security deposit and \$50.00 cleaning fee. The Landlord was not entitled to collect a cleaning fee over and above the security deposit amount as the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”) do not allow for this. Nor was the Landlord entitled to collect a security deposit that exceeded half the monthly rent. The Landlord should not have collected the \$50.00 cleaning fee and the Tenant could have deducted this amount from rent during the tenancy pursuant to section 19(2) of the *Act*. However, the Landlord still holds both amounts and I will consider the Landlord to hold a \$420.00 security deposit.

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 *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Given the testimony of the Landlord, there is no basis to find that the Tenant extinguished her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished her rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent.

Based on the undisputed testimony of the Landlord and texts, I find the tenancy ended March 31, 2019.

Based on the decision on File Number 1, I find the Landlord was deemed to have received the Tenant's forwarding address in this decision. The Arbitrator stated at page three:

To clarify, this means that the landlord has 15 days from the receipt of this decision to address the tenant's security deposit in accordance with section 38 of the Act. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the Act.

The decision is dated September 19, 2019. The Landlord did not know when she received the decision. However, the Application was filed September 30, 2019, within 15 days of the date of the decision and therefore I find the Landlord complied with the decision.

I also find the Landlord complied with section 38(1) of the *Act* as the Landlord claimed against the security deposit within 15 days of being deemed to have received the Tenant's forwarding address.

Door repair, paint, lock, rent

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, 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 with this Act, the regulations or their tenancy agreement 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.

Door repair, paint, lock,

Section 37 of the *Act* 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...

Based on the undisputed testimony of the Landlord, photos, CIR and texts, I find the Tenant broke the door to her bedroom. Based on the same evidence, I find the damage was beyond reasonable wear and tear. I find the Tenant breached section 37 of the *Act*.

Based on the undisputed testimony of the Landlord, photos, CIR and texts, I accept that the Landlord had to have the door fixed. Based on the undisputed testimony of the Landlord, receipts and invoice, I accept that it cost \$204.14 to fix the door. I find this amount reasonable given the extent of the damage. I award the Landlord the amount sought.

Rent

Section 45 of the *Act* states:

(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)

Based on the written tenancy agreement, I accept the tenancy was for a fixed term ending April 30, 2019.

Based on the undisputed testimony of the Landlord and texts, I accept that the Tenant provided notice that she was vacating the rental unit March 16, 2019. Based on the same evidence, I accept that the Tenant vacated the rental unit March 31, 2019. I find the Tenant breached section 45(2) of the *Act* by giving approximately two weeks notice and by ending the fixed term tenancy early.

I accept that the Tenant did not pay rent for April and therefore find the Landlord lost April's rent due to the Tenant's breach.

I am not satisfied the Landlord mitigated the loss as I am not satisfied the Landlord posted the unit for rent within a reasonable time after receiving the Tenant's notice that she was moving out. The Landlord should have done so as the Landlord was required to take reasonable steps to mitigate the loss.

I am satisfied the Landlord is entitled to some compensation and award the Landlord \$370.00 as half the monthly rent for April. I do so for the following reasons. The Tenant only gave approximately two weeks notice of vacating which is not sufficient. It is unreasonable to expect the Landlord to have posted the unit for rent and re-rented the unit for April 01, 2019, within two weeks. I also accept that the bedroom door had to be repaired and accept this may have delayed re-posting the unit. However, I am not satisfied the Landlord took steps to mitigate the loss by re-posting the unit within a reasonable time and am not satisfied the Landlord could not have re-rented the unit sometime in April if she had taken steps to mitigate.

The Landlord is awarded \$370.00 as half the monthly rent for April.

Filing fee

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

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Door repair	\$100.00
2	Paint	\$61.59
3	Lock	\$42.55
4	Rent	\$370.00
5	Filing fee	\$100.00
	TOTAL	\$674.14

The Landlord can keep the \$420.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for the remaining \$254.14 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$674.14. The Landlord can keep the \$420.00 security deposit. The Landlord is issued a monetary order for the remaining \$254.14. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: February 03, 2020

 Residential Tenancy Branch