Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $12,195.90 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent ("**TS**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that TS and I were the only ones who had called into this teleconference.

TS testified that she served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on October 18, 2019, and via regular mail (enclosing a slightly reduced monetary order worksheet and supporting receipt) on January 17, 2020. Both were sent to the tenant's forwarding address provided to the landlord at the end of the tenancy. TS provided a Canada Post tracking number confirming the registered mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these packages, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order in the amount of $12,195.90;
2) recover her filing fee from the tenant; and
3) retain the security deposit in partial satisfaction of any monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of TS's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting Jun 1, 2017 and ending on May 30, 2019. On July 13, 2018, the parties agreed to extend the term of the tenancy until May 31, 2020. Monthly rent is $3,500. The tenant paid the landlord a security deposit of $1,750. The landlord still retains this deposit.

The rental unit was rented fully-furnished to the tenant. Monthly rent included: strata fees; basic cable and home phone; basic internet; and parking.

Monthly rent did not include: heat; hot water; gas; electricity; gardening; pool or hot tub maintenance; monitored alarm system; or building amenities.

The tenancy agreement contains the following clauses relevant to this proceeding:

> 7. LIQUIDATED DAMAGES: If the tenant ends the fixed term tenancy before the end of the original term as set out in clause 6 above, the landlord may treat this Agreement as being at an end. In such event, the tenant will pay the sum of $400.00 plus HST to the landlord's agent as liquidated damages, and not as a penalty. Liquidated damages covers the landlords agent's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.
> [...]
> 48. The tenant understands she is responsible to pay the owner for the cost of monitoring the home security system. The owner will send a copy of the bill to tenant for payment/reimbursement to owner. The owner will keep the account in their name.

[…]
50. The tenant understands she must get Hydro and Propane account set up in her name.

TS testified that the tenant vacated the rental unit on September 8, 2019. She testified that the landlord made this application for dispute resolution on October 9, 2019.

The landlord claims $12,195.90 in damages, representing the following:

Arrears (1/2 June, July, and August 2019)	$8,750.00
Overholding (September 1 to 8, 2019)	$920.54
Cleaning	$220.50
Carpet Cleaning	$220.50
Lock replacement and re-keying	$264.44
Propane	$323.46
Alarm monitoring	$308.96
Liquidated Damages	$400.00
Extra hours - property management	$630.00
Move furniture back into rental unit	$157.50
Total	**$12,195.90**

TS testified that at the tenant only paid $1,750 in rent for June 2019, and no rent for July or August 2019. She testified that the tenant gave notice of her intention to vacate the rental unit as of August 31, 2019. TS argued that this was a breach of the fixed-term tenancy agreement which was to end on May 31, 2020. She testified that, contrary to her notice, the tenant did not move out of the rental unit on August 31, 2019. Rather, TS testified the tenant moved out on September 8, 2019. The landlord relies on the foregoing as the bases for her claims for rental arrears, overholding compensation, and liquidated damages.

On September 1, 2019, TS testified that she attended the rental unit to collect the tenant's keys and conduct a move-out inspection. However, she testified that the tenant was not there, and that the tenant did not appear to have moved out. TS testified that the tenant changed the front door lock to a "smart lock" and that the tenant did not give her a key. Additionally, TS testified that the tenant never returned the keys to the other exterior doors of the rental unit. As such, TS had all entire exterior doors re-keyed and purchased and installed a replacement lock for the front door. TS testified it cost $264.44 to for this to be done. The landlord submitted an invoice supporting this amount into evidence.

TS testified she waited for the tenant at the rental unit for three hours on September 1, 2019, but the tenant did not show up. She testified the tenant later called and told her that she was on a hike and was out of cell range at the time. TS testified that the tenant told her that she booked movers for September 6, 2019 and that TS should return to the rental unit then to do the move-out inspection. TS did so, but the movers never arrived. TS testified that she and the tenant waited six hours. During this time, they completed a move-out condition inspection report which contained the tenant's forwarding address (this report was entered into evidence).

TS testified that movers were rebooked for September 8, 2019 (they attended on this day) and that she returned to the rental unit that day for two hours to oversee the tenant's move out.

The landlord claims compensation for 12 hours of TS's time (valued at $50 per hour) for the unnecessary trips TS was required to make to the rental unit due to the tenant's failure to move out on August 31, 2019. The landlord submitted an invoice from her property management company into evidence for $630 (12 hours x $50 + GST = $630).

TS testified that the move-out was hectic on September 8, 2019, and the tenant did not finish cleaning the rental unit. Specifically, she testified that there were pine needles throughout the rental unit, which necessitated the carpets in three bedrooms to be professionally cleaned (in addition to being vacuumed). She also testified that the tenant did not clean the oven or refrigerator, nor did the tenant clean one of the bathrooms. The landlord hired cleaners to clean the rental unit at a cost of $220.50, and carpet cleaners to clean the carpets in the bedrooms at a cost of $220.50. The landlord submitted copies of receipts for both expenses into evidence.

TS testified that, during the course of the tenancy, the tenant moved several pieces of the landlord's furniture from the living space of the rental unit into its garage. TS testified that the tenant did not move this furniture back at the end of the tenancy. The landlord hired a maintenance company to move the furniture back into the living space. The landlord submitted a receipt for $437.06, of which TS testified that $157.50 (representing 3.5 hours work) was incurred in moving the furniture back into the rental unit.

TS testified that the propane tank servicing the rental unit was empty at the end of the tenancy. She testified that it was filled to 40% at the start of the tenancy. She submitted a move-in condition inspection report which states as much. The landlord submitted an

invoice for the refilling of the propane tank in the amount of $808.67. She argued that, per the tenancy agreement, gas and propane costs are to be borne by the tenant, and as such the tenant must pay for 40% of the cost of refilling the tank $323.46 ($808.67 x 40%).

Similarly, TS argued that, per the tenancy agreement, the tenant is responsible for the cost of monitoring the alarm system in the rental unit. She testified that the landlord sent the invoices for the monitoring of the alarm system to the tenant, and that the tenant failed to pay $308.96 in alarm monitoring costs from March 1, 2019 to August 31, 2019. The landlord submitted two invoices from the alarm monitoring company supporting this amount.

Finally, TS argued that the tenant breached the tenancy agreement by ending it prior to the end of its term (May 31, 2020). As such, she argued, the landlord is entitled to liquidated damages in the amount of $400, per the tenancy agreement.

TS testified that, following the landlord making this application, the tenant made two $500 payments to the landlord (the first on December 11, 2019 and the second on January 23, 2020). TS stated that these amounts ($1,000 total) should be deducted from any monetary award made in favour of the landlord.

Analysis

1. Security Deposit

Based on the testimony of TS, and the documentary evidence provided by the landlord, I find that the tenancy ended on September 8, 2019, and that the tenant provided the landlord her forwarding address on September 6, 2019.

Section 38 of the Act states:

> **Return of security deposit and pet damage deposit**
>
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> […]
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

TS testified that the landlord did not make this application until October 9, 2019. This is more than 15 days after the end of the tenancy or the date the tenant gave the landlord her forwarding address. Accordingly, I find that the landlord failed to comply with section 38(1) of the Act and that the landlord must pay the tenant double the amount of the security deposit ($3,500). Additionally, the landlord may not claim against the security deposit. However, the landlord still retains a valid monetary claim.

I will address the landlord's claim below and offset an amount double to the security deposit from any monetary order made.

2. Landlord's Monetary Claim.

I accept TS's undisputed testimony in its entirety. I found TS to be forthcoming in her oral evidence and that her testimony was supported by documentary evidence.

a. Rental Arrears

I find that the tenant did not pay rent for half of June, and all of both July and August 2019. Accordingly, I find that the tenant is in rental arrears of $8,750. I order that the tenant pay the landlord $8,750 in satisfaction of these arrears.

b. Overholding

I find that the tenant did not vacate the rental unit until September 8, 2019. Section 57 of the Act states:

> (1) "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.
>
> […]
>
> (3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I find that the tenant was an “overholding tenant” as defined by the Act, as she failed to vacate the rental unit by August 31, 2019 (the date by which she purported to end the tenancy). As such, the landlord is entitled to compensation for the eight days the tenant continued to reside in the rental unit after the tenancy had ended. The landlord calculated this amount as $920.54. I am uncertain how the landlord arrived at this figure. I calculate the prorated rent for those eight day to be $933.36 ($3,500 ÷ 30 days = $116.67 per day; $167.67 x 8 days = $933.36). Accordingly, I order that the tenant pay the landlord this amount.

c. Cleaning and carpet cleaning

Section 37(2)(a) of the Act 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

Based on the testimony of TS and on the move-out condition inspection report I find that the rental unit was not left reasonably clean at the end of the tenancy. I find that additional cleaning, including carpet cleaning, was required in the three bedrooms, one bathroom, and the kitchen. I find that the landlord incurred the combined cost of $441 to bring the condition of the rental unit to that of “reasonably clean”. Accordingly, I order that the tenant pay the landlord this amount.

d. Locks

Section 37(2)(b) states:

> **Leaving the rental unit at the end of a tenancy**
> 37(2) When a tenant vacates a rental unit, the tenant must
> (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.

I accept TS’s testimony that the tenant did not return the keys to the rental unit to the landlord. I find that this is a breach of section 37(2)(b) of the Act.

As such, I find that the cost incurred by the landlord to re-key all exterior locks of the rental unit and to replace the front door lock were reasonably incurred as the result of the tenant's breach. I find that the cost of such work incurred by the landlord was $264.44. As such, I order that the tenant pay the landlord this amount.

e. Propane Tank

I find that, pursuant to the tenancy agreement, the cost of gas and propane is not included in the monthly rent and must therefore be borne by the tenant. I find that, based on the move-in condition inspection report, the propane tank which was 40% full at the start of the tenancy. I find, based on TS's testimony, that it was empty at the end of the tenancy. Accordingly, I find that the tenant has breached the tenancy agreement by using the propane contained in the tank, and not paying to replace it. I accept that the cost of filling the propane tank to 40% is $323.46. Accordingly, I order that the tenant pay the landlord this amount.

f. Alarm Monitoring

I find that, pursuant to the tenancy agreement, the cost of monitoring the alarm system is to be borne by the tenant. I find that the tenant did not pay the cost of monitoring the alarm system from March 1, 2019 to August 31, 2019. Based on the invoices from the alarm monitoring company, I find that the landlord has paid $308.96 for the alarm to be monitored for this time. Accordingly, I order that the tenant pay the landlord this amount.

g. Liquidated Damages

I find that the tenant breached the fixed-term tenancy agreement by ending it prior to the end of the term (May 31, 2020). I find that, pursuant to the tenancy agreement, the tenant must pay the landlord liquidated damages in the amount of $400. I find that this amount is not a penalty (per the tenancy agreement) but rather represents the landlord's costs of re-renting the rental unit.

h. Management Costs

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The first step in this analysis is to determine if there has been a breach of the Act, tenancy agreement, or tenancy regulation. TS did not refer me to any section of the Act or the tenancy agreement which the tenant broke by not attending the rental unit on September 1, 2019, or by the movers not attending on September 6, 2019. As such, no compensation for any amount incurred by the landlord as a result of these delays is not compensable under the Act.

Similarly, TS did not refer me to any authority which provides for the tenant to compensate the landlord the time their property manager spent overseeing a tenant's move out. As such, no compensation is warranted for the time TS spent at the rental unit on September 8, 2019.

Such expenses are to be expected in the course of being a landlord and should be factored in by the landlord when setting the monthly rent.

i. Cost of Moving Furniture

TS did not refer me to any section of the Act or tenancy agreement that the tenant breached by not returning the landlord's furniture to its original location within the rental unit. I do not consider moving the furniture to another part of the rental unit to be leaving the rental unit "unreasonably clean" or causing damage to the rental unit

I would characterize the tenant's actions as a relocation or rearrangement of the furniture within the rental unit. I find that the tenant did not breach the Act by moving the landlord's furniture to the garage, and that she is not responsible for the cost of moving the furniture back to the living space. Accordingly, I decline to order that the tenant reimburse the landlord for this expense.

j. Subsequent Payments of Tenant

I find that, following the landlord making this application, the tenant paid the landlord $1,000. I find that this amount should be deducted from the preceding monetary orders.

k. Filing Fee

As the landlord has been substantially successful in her application, pursuant to section 72 of the Act, I order that the tenant reimburse her the cost of filing this application ($100).

Conclusion

I order that the tenant pay the landlord $7,021.22, representing the following:

Arrears (1/2 June, July, and August 2019)	$8,750.00
Overholding (September 1 to 8, 2019)	$933.36
Cleaning	$220.50
Carpet Cleaning	$220.50
Lock replacement and re-keying	$264.44
Propane	$323.46
Alarm monitoring	$308.96
Liquidated Damages	$400.00
x2 security deposit	-$3,500.00
partial payment by tenant (Dec 11 and Jan 23)	-$1,000.00
Filing Fee	$100.00
Total	**$7,021.22**

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: February 11, 2020

Residential Tenancy Branch