



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference connection open throughout the hearing to enable the tenant to call into this hearing scheduled for 1:30 P.M. 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 the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she received the tenant's forwarding address by regular mail on September 27, 2019 and sent the Notice of Dispute Resolution Proceedings package to the tenant at that address on November 1, 2019 by registered mail. The tracking number for the mailing is recorded on the cover page of this decision. The landlord received a second forwarding address by regular mail from the tenant and re-sent the Notice of Dispute Resolution Proceedings package to that address on March 3, 2020. The tracking number is also recorded on the cover page. Both packages were returned to sender as moved/unknown. Copies of the forwarding address letters and returned envelopes were provided as evidence by the landlord. Pursuant to sections 89 and 90 of the *Act*, I find the tenant deemed served with the Notice of Dispute Resolution Proceedings package on November 6, 2019, five days after it was mailed to the tenant's first known address.

Issue(s) to be Decided

Is the landlord entitled to compensation?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following **undisputed** evidence. The rental unit is a lower unit located in the landlord's home with an upper and lower unit. Included in the rent is a stacking washer/dryer, not shared with the landlord. The landlord testified the washer/dryer was purchased just prior to the tenancy beginning and a closet was built around the washer/dryer, specific to that model's dimensions.

A copy of the tenancy agreement was provided as evidence. The tenancy began on March 5, 2017 as a fixed one year tenancy becoming month to month at the end of the fixed term. Rent was set at \$950.00 per month payable on the first day of the month. The landlord testified rent was being paid through social assistance for the tenant. A security deposit of \$425.00 was collected and is still being held by the landlord.

During the tenancy the tenant's boyfriend had moved into the rental unit. In March 2019, the landlord had discovered the tenant's boyfriend stole the washer/dryer and taken it to a different city when he relocated.

The parties ended the tenancy by mutual agreement on July 5, 2019. The tenant advised the landlord that she planned on moving to the city where her boyfriend was but had no access to a truck to move her belongings. The landlord agreed to hire a moving truck to assist the tenant in moving pursuant to the tenant's agreement that the cost of the truck would be taken out of the tenant's security deposit. The landlord testified that she had a text message from the tenant agreeing to this arrangement however all her texts were lost when her cell phone was damaged by water.

On July 5th, the landlord assisted the tenant in packing her belongings and together they drove to the other city in the moving van hired by the landlord. The landlord recovered her washer/dryer from the boyfriend however the boyfriend had left them outdoors for approximately one year. The landlord submits that due to this, the washer/dryer was damaged. The washer wouldn't turn on, the dryer drum stopped spinning, and the element wouldn't heat. She wanted to replace the washer/dryer unit but chose to have it repaired as the closet was custom built around this unit's dimensions. The landlord hired a local company to clean and repair the washer/dryer and submitted an invoice for 5 hours at \$50.00 per hour to make it useable once again.

The tenant had agreed to come back to the unit after settling in with her boyfriend to conduct a condition inspection report with the landlord. The landlord did not hear from the tenant anytime after dropping her off at the boyfriend's place, except by mail where she was given the tenant's forwarding address and her request for a return of the security deposit. The landlord did not conduct a condition inspection report upon move-out in the absence of the tenant and send a copy to her. The landlord acknowledges she did not give the tenant any written notices to arrange a date and time for condition inspection report. On the last day of the tenancy, the moving van was hired and both she and the tenant were busy trying to move the tenant to her new accommodations and not incur further costs for the moving van.

The landlord submits that the tenant agreed to the cost of the moving van and that the tenant should be responsible for paying for it because it was used to recover the washer/dryer that the tenant allowed the boyfriend to steal. She seeks \$234.87 for the rental of the van, and \$78.47 for the extra mileage charged by the company. Invoices were supplied for both. She seeks reimbursement for gas in the amount of \$108.44 however no receipt was supplied.

Upon the tenant moving out, the unit was left unclean with damage to the countertops and bathroom vanity. There were many pinholes, nail holes and dents requiring filling, sanding patching. The entire unit required repainting due to the extensive filling and patching. The landlord used the services of the same company hired to fix the washer/dryer and submitted an invoice seeking:

Item	Cost	Amount
Cleaning bathroom/kitchen, windows, floors	6 hrs at \$27.50/hr.	\$165.00
Fill, sand holes and dents	3 hrs at \$45.00/hr.	\$135.00
Paint walls	10 hrs at \$45.00/hr.	\$450.00

The landlord submitted an invoice for paint supplies and paint in the amounts of \$83.42 and \$112.81.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Moving van rental and costs to repair washer/dryer

Based on the undisputed testimony of the landlord, I am satisfied that the landlord suffered a loss due to the tenant allowing her boyfriend to 'steal' the landlord's washer/dryer. The landlord had to incur costs to recover the washer/dryer and have it brought back to the condition it was in before it was stolen. I am satisfied that the landlord is entitled to recover the cost of the moving van rental (\$234.87), the cost incurred for the extra mileage (\$78.47) and the cost to repair the washer and dryer (\$250.00). The landlord has not provided an invoice for the gas and therefore cannot prove the value of this loss. I decline to award the claim for gas.

- Landlord's claim for cleaning and painting

The landlord did not provide any photographs of the rental unit as evidence to allow me to determine the condition of the rental unit at the beginning or end of the tenancy. Nor did she provide a condition inspection report for me to compare the condition of the rental unit at the end of the tenancy as opposed to the state of the unit at the commencement.

Section 21 of the Residential Tenancy Regulations state:

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.

Without a condition inspection report or photographs to corroborate the landlord's claim that the rental unit was left unclean with damage to the walls, the landlord has not met the burden of proof to satisfy me the rental unit was left in the condition she says it was. I am not satisfied the damage or loss exists and I decline to award the landlord cleaning or painting costs.

- Filing fee

As the landlord's application was partially successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

- Security deposit

The landlord testified that she received written notification of the tenant's forwarding address on September 27, 2019. In the notification, provided as evidence by the landlord, the tenant indicates the landlord had 15 days to return the security deposit or file for dispute resolution. The landlord did not return the security deposit in 15 days and did not file for dispute resolution until October 25, 2019.

Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit or pet damage deposit or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the *Act* says that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline PG-17 says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*;

I find the landlord did not provide 2 opportunities to inspect the suite with the tenant at the end of the tenancy and the landlord's right to claim against it was extinguished pursuant to sections 23 and 24. Further, the landlord did not return the tenant's security deposit within 15 days of being served with the tenant's forwarding address at the end of the tenancy, contrary to section 38 of the *Act*.

The wording of section 38(6) is clear and unequivocal. The tenant has not waived the doubling of the deposits and is entitled to **\$850.00** to be returned. The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$850.00 in partial satisfaction of the monetary order.

Item	amount
Moving van rental	\$234.87
Extra mileage	\$78.47
Washer/dryer repair	\$250.00
Filing fee	\$100.00
Less security deposit (doubled)	(\$850.00)
Total	(\$186.66)

Conclusion

The tenant is entitled to a monetary order in the amount of \$186.66.

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: March 17, 2020

Residential Tenancy Branch