



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 27, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package and evidence were sent by registered mail to the Tenant's forwarding address on December 06, 2019. A photo of the package was submitted. The Agent testified that the Tenant provided the Landlord with his forwarding address by email. This email was in evidence.

The Agent provided Tracking Number 1. I looked this up on the Canada Post website which shows the recipient is not at the address and the package was returned to the sender.

I am satisfied based on the email submitted that the Tenant provided a forwarding address to the Landlord by email July 08, 2019. I am satisfied based on the undisputed testimony of the Agent that the package was sent to the forwarding address provided. The Landlord was permitted to serve the Tenant at the forwarding address he provided. I am satisfied 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 package December 11, 2019. I find the package was served in enough time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent 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 caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Suite cleaning	\$210.00
2	Suite and mailbox rekey	\$229.88
3	Building fob	\$55.99
4	Blind replacement	\$231.42
	TOTAL	\$727.29

A written tenancy agreement was submitted as evidence. The tenancy started April 09, 2019 and was for a fixed term ending April 30, 2020. Rent was \$2,295.00 due on the first day of each month. The Tenant paid a \$1,147.50 security deposit. The agreement is signed by the Tenant and for the Landlord.

The Agent testified as follows.

The tenancy ended July 04, 2019.

The Tenant provided his forwarding address by email July 08, 2019.

The parties did a move-in inspection April 09, 2019, completed the Condition Inspection Report (CIR) and signed the CIR. The unit was empty at the time. The CIR was sent to

the Tenant by email and dropped off at the rental unit within a couple of days of the inspection.

The Landlord did a move-out inspection July 04, 2019. A notice about the inspection was posted on the door of the rental unit June 30, 2019. The Tenant was still living at the rental unit June 30, 2019. The Tenant had vacated the rental unit by July 04, 2019 and did not participate in the inspection. She does not know if or when the move-out CIR was given to the Tenant, other than as evidence on the hearing.

#1 Suite cleaning \$210.00

The photos submitted show the state of the rental unit at the end of the tenancy. Both the interior and exterior of the rental unit had to be cleaned. The Landlord hired a cleaner. The invoice for this has been submitted. The CIR shows the rental unit was dirty at the end of the tenancy.

#2 Suite and mailbox rekey \$229.88

The Tenant did not give the keys for the rental unit back at the end of the tenancy. The Landlord had to rekey the unit. The invoice for this has been submitted. The CIR shows keys were not returned.

#3 Building fob \$55.99

The Tenant did not return the building fob. The CIR shows this. The Landlord had to replace the fob. An internal invoice was created for this because the Landlord buys large quantities of fobs at a time. The invoice has been submitted.

#4 Blind replacement \$231.42

The photos submitted show a blind in the living room was missing at the end of the tenancy. This is noted on the CIR but in the wrong section. The Landlord had to replace the blind. The invoice for this has been submitted.

During the hearing, the Agent confirmed the Landlord had been issued a Monetary Order against the Tenant on June 25, 2019 for \$2,395.00 on File Number 1. The Agent testified that this had been sent to the Tenant, but the Tenant has not responded or paid the amount. The Agent confirmed the Landlord is seeking to keep the security deposit

towards the outstanding Monetary Order and is seeking a further Monetary Order for the damage noted above.

Analysis

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 *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I am satisfied based on the testimony of the Agent and CIR that the Tenant participated in the move-in inspection. Therefore, the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied based on the evidence provided that the Tenant was offered two opportunities to do a move-out inspection. The Agent testified that a notice about the inspection was posted on the door of the rental unit June 30, 2019. First, this is only one opportunity. Second, the notice used is not the proper notice for this purpose as it is a notice to enter for the Landlord to do an inspection, not a notice about the parties doing a move-out inspection together. In the circumstances, I am not satisfied the Tenant extinguished his rights in relation to the security deposit under section 36 of the *Act*.

Section 38(1) of the *Act* states:

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.

(emphasis added)

Section 38(3) of the *Act* states:

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

I am satisfied based on the undisputed testimony of the Agent and Monetary Order on File Number 1 submitted that the Landlord was issued a Monetary Order against the Tenant for \$2,395.00 on June 25, 2019. I am satisfied based on the undisputed testimony of the Agent that this Monetary Order was issued prior to the end of the tenancy. I also note it was issued with an Order of Possession for the rental unit.

I am satisfied based on the undisputed testimony of the Agent that the Tenant has not paid the \$2,395.00. Therefore, pursuant to section 38(3) of the *Act*, the Landlord can keep the security deposit towards the outstanding Monetary Order. This accounts for the entire security deposit because it is only \$1,147.50.

I have not considered whether the Landlord complied with section 38(1) of the *Act* because the Landlord was not required to do so. The Landlord was entitled under section 38(3) of the *Act* to keep the security deposit towards the outstanding Monetary Order.

I do not find it necessary to determine whether the Landlord extinguished their right to the security deposit under sections 24 or 36 of the *Act* as extinguishment only applies when the Landlord has claimed against the security deposit for damage to the rental unit. Here, the Landlord was entitled to keep the security deposit towards the outstanding Monetary Order and the Agent confirmed at the hearing that the Landlord is seeking to do so. The Agent confirmed at the hearing that the Landlord is seeking a further Monetary Order for damage to the rental unit. Therefore, I have not considered whether the Landlord is entitled to keep the security deposit for damage to the rental unit.

Compensation

Section 7 of the *Act* states:

(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...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.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and 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, 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.

#1 Suite cleaning \$210.00

I am satisfied based on the undisputed testimony of the Agent, photos and CIR that the rental unit was dirty at the end of the tenancy. Based on the same evidence, I am satisfied the Tenant breached section 37 of the *Act* in this regard. Based on the same evidence, I am satisfied the Landlord had to hire a cleaner to clean the rental unit.

I am satisfied based on the invoice that the cleaning cost \$210.00. I find this amount reasonable given the state of the rental unit as shown in the photos and on the CIR. I award the Landlord this amount.

#2 Suite and mailbox rekey \$229.88

I am satisfied based on the undisputed testimony of the Agent and CIR that the Tenant did not give the keys for the rental unit back at the end of the tenancy. I am satisfied the Tenant breached section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Agent that the Landlord had to rekey the unit. I am satisfied based on the invoice submitted that this cost \$229.88. I find this amount reasonable given it includes labour and materials. I award the Landlord this amount.

#3 Building fob \$55.99

I am satisfied based on the undisputed testimony of the Agent and CIR that the Tenant did not return the building fob. I am satisfied the Tenant breached section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Agent that the Landlord had to replace the fob. I am satisfied based on the invoice submitted that this cost \$55.99. I find this amount reasonable given the nature of the item replaced and given it is not an excessive amount. I award the Landlord this amount.

#4 Blind replacement \$231.42

I am satisfied based on the undisputed testimony of the Agent, photos and CIR that a blind was missing at the end of the tenancy. I am satisfied the Tenant breached section 37 of the *Act* in this regard. Based on the same evidence, I am satisfied the Landlord had to replace the blind.

I am satisfied based on the invoice that it cost \$231.42 to replace the blind. I find this amount reasonable given it includes labour and materials. I award the Landlord this amount.

Filing fee

Given the Landlord was successful in the Application, I award the Landlord 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 compensation:

Item	Description	Amount
1	Suite cleaning	\$210.00
2	Suite and mailbox rekey	\$229.88
3	Building fob	\$55.99
4	Blind replacement	\$231.42
5	Filing fee	\$100.00
	TOTAL	\$827.29

As stated, the Landlord can keep the security deposit towards the outstanding Monetary Order issued on File Number 1.

The Landlord is entitled to \$827.29 in compensation for damage and the filing fee. I issue the Landlord a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$827.29. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: May 01, 2020

Residential Tenancy Branch