



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent 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 the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant ended the tenancy early in order to return to her home country due to the pandemic. The landlord entered into evidence the tenant's notice to end tenancy dated March 20, 2020 effective March 31, 2020. The landlord's agent testified that it was received on March 23, 2020, by which time the tenants had already vacated the subject rental property. The landlord's agent testified that the tenant's notice to end tenancy provided the landlord with the tenant's forwarding email address in case the landlord needed to contact her with tenancy related matters. The notice to end tenancy was entered into evidence and confirms the landlord's agent's testimony.

I find that the tenant was served with the landlord's application for dispute resolution in accordance with the Director's Order dated March 30, 2020.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord's agent testified to the following undisputed testimony. This month to month tenancy began on February 1, 2019 and ended on March 23, 2020. Monthly rent in the amount of \$1,486.00 was payable on the first day of each month. A security deposit of \$725.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant provided her forwarding address to the landlord in her notice to end tenancy. The landlord applied for dispute resolution on April 7, 2020, 15 days after receiving the notice.

The landlord's agent testified that the landlord is seeking April 2020's rent in the amount of \$1,486.00, because the tenant did not provide one full month's notice.

The landlord's agent testified that the tenant left in a hurry and did not clean the subject rental property and did not clean the fireplace and chimney. The landlord entered into evidence a receipt for cleaning in the amount of \$410.00 and a receipt for fireplace and chimney cleaning in the amount of \$40.00.

The landlord's agent testified that it is the landlord's policy to re-paint the subject rental property before each tenancy begins and that the subject rental property was painted just before the tenant moved in. The landlord's agent entered into evidence a receipt for painting and materials in the amount of \$240.00.

The landlord's agent testified that the walls were not clean at the end of the tenancy and required re-painting.

A move in condition inspection report was not entered into evidence. The landlord's agent testified that she had a copy and meant to upload it. I provided the landlord's agent with 24 hours to upload the move in condition inspection report. The landlord's agent uploaded the move in condition inspection report within the required 24 hours. The move in condition inspection report states that the entire subject rental property is in "clean condition".

The landlord's agent entered into evidence a move out condition inspection report. The landlord's agent testified that the tenant was not contacted to complete the move out condition inspection report because she had already left the country. The landlord's agent testified that no one was contacted to complete the move out condition inspection report.

The tenant's notice to end tenancy provides the name and number of two people the tenant authorized to complete the move out condition inspection report with the landlord.

The move out condition inspection report states that the walls of the subject rental property are not cleaned. No photographic evidence was entered into evidence.

Analysis

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is

earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the notice to end tenancy could legally take effect was April 30, 2020. The landlord was not required to rent the subject rental property until May 1, 2020 and the tenant is responsible for April 2020's rent in the amount of \$1,486.00.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the landlord's testimony that the tenant did not clean the subject rental property, or the fireplace/chimney given the short notice provided by the tenants due to the global pandemic and the difficulty securing flights home. Pursuant to section 37(2)(a), I find that the tenant is responsible for the cleaning costs in the amount of \$450.00.

The landlord's agent testified that it is the landlord's policy to paint the subject rental property before each new tenant. The move out condition inspection report stated that the walls were "not clean", not that they were damaged or stained. I find that the landlord has not proved that the walls required re-painting at the end of this tenancy. I also find that landlord is not entitled to have the tenant pay for their decision to repaint the unit before each new tenant. I give little weight to the move out condition inspection report because it was not completed with the tenant or one of the authorized representatives of the tenant.

Based on the above, I dismiss the landlord's claim for the cost of painting and materials in the amount of \$240.00.

Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$725.00.

As the landlord was successful in this application for dispute resolution, I find that it is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
April 2020's rent	\$1,486.00
Cleaning	\$410.00
Fireplace/ chimney cleaning	\$40.00
Filing Fee	\$100.00
Less security deposit	-\$725.00
TOTAL	\$1,311.00

The landlord is provided with this Order in the above terms and 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: August 12, 2020

Residential Tenancy Branch