



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 1, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- 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.

The Landlord attended the hearing. However, the Tenant did not. The Landlord testified that she sent the Notice of Hearing and all evidence to the Tenant by email on June 9, 2020.

I find it important to note that during March 2020, the Director of the Residential Tenancy Branch made a directive to allow the service of evidence by email. This was a temporary measure in place to ensure physical distancing protocols were followed in the wake of the global COVID-19 pandemic. Email service was allowed until June 24, 2020.

Since this application was filed prior to that time, and the Landlord served her evidence on June 9, 2020, I find email service is sufficient in this case.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;

- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

In this case, the Landlord stated that she sent it to an email address which the Tenant uses each month to send email money transfers for rent payment. The Landlord has also used this address to send money back to the Tenant. The Landlord stated they have used this address routinely for a long time. Although the Tenant never replied to the email, I find the Tenant is deemed served with the Notice of Hearing and evidence 3 days after it was sent to her email address, June 12, 2020.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord provided a monetary order worksheet to itemize what she is seeking in this application. The Landlord provided testimony, photos, and receipts for the items. The Landlord also provided a copy of the condition inspection report.

The Landlord stated that she signed a mutual agreement to end tenancy with the Tenant at the end of April 2020, effective May 31, 2020. The Landlord stated that the Tenant moved out May 30, 2020.

The Landlord stated that a move-in inspection was completed at the start of the tenancy, and the Condition Inspection Report (CIR) was signed by both parties. A copy was provided into evidence. The Landlord stated that she and the Tenant agreed to do the walk-through move-out inspection on May 30, 2020, the same day the Tenant moved out. The Landlord stated that when she arrived to do the inspection, the Tenant was moved out and nowhere to be found, and would not respond to phone calls, texts, or emails. The Landlord stated that the Tenant has ignored her since this time. The Landlord completed the move-out inspection in the Tenants absence.

The Landlord stated that month rent was \$1,350.00, and was due on the first of the month. The Landlord stated that she initially held a \$675.00 security deposit. However, the Landlord stated that they came to an agreement earlier this year to use \$375.00 of this deposit to help pay for January rent, which the Tenant could not afford. As a result of this agreement, the Landlord stated that she currently only holds \$300.00 as a security deposit.

As per the Monetary Order Worksheet, there were 8 items in total, as follows:

1. \$1,350.00 – Unpaid May rent

The Landlord stated that the Tenant did not pay any rent for May, and owes this amount in full, as she lived there until May 30, 2020.

2. \$14.70 – Key replacement

The Landlord stated that, as per the move-out CIR, the Tenant failed to return 3 keys. The Landlord stated that she had her own copies of the keys, and had to pay to have them copied and re-cut. The Landlord provided a receipt for this item.

3. \$21.50 – Light Bulbs

The Landlord stated that all light bulbs were functioning at the start of the tenancy, and 6 bulbs were burned out at the end of the tenancy. The Landlord provided a receipt for this item.

4. \$33.53 – Front door lock

The Landlord stated that since the Tenant failed to return all keys, she had to have the exterior front door lock changed so that the Tenant would not have access, going forward. A receipt was provided into evidence.

- 5. \$330.75 – Suite Cleaning
- 6. \$100.00 – Garbage disposal

The Landlord stated that when the Tenant left, she left behind bikes, beds, clothes, piles of debris, and did no cleaning prior to vacating. The Landlord pointed to the CIR to show the mess that was noted. The Landlord stated that everything needed cleaning, and she hired a cleaning company to come in and perform this service at a cost of \$330.75. The Landlord also stated that she spent 4 hours of her time to clean up, and dispose of all the leftover debris the Tenant left behind. The Landlord is seeking \$25.00 per hour x 4 hours, plus the cost of the hired cleaners. A receipt was provided for the cleaning.

- 7. \$180.00 – Stove Replacement

The Landlord stated that the Tenant cracked the glass stovetop of the stove, as noted in the CIR and the stove was not repairable. The Landlord stated that she located a used stove on Facebook, and bought a used replacement for \$180.00. The Landlord provided a copy of the listing, and a note from the seller. The Landlord stated the stove was in fine shape prior to the tenancy.

- 8. \$315.00 – Lost rent while unit was being cleaned

The Landlord is seeking a 7 days worth of rent (7 x \$45.00 per day), which is a per diem rate based on how much the Tenant was paying. The Landlord stated that she was unable to show the rental unit for the week following the Tenant's departure because of the large mess left behind. The Landlord also stated that the Tenant would not accommodate rental showings before she left, due to COVID. The Landlord stated that the unit was way too messy to show, prior to cleaning, so she is seeking this one week's worth of rent, even though it was not re-rented for a couple of months.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenant failed to pay rent for May 2020, \$1,350.00. I also find the evidence sufficiently demonstrates that the Tenant failed to return keys, clean, and remove all her personal belongings. I also find the Tenant caused damage to the stove, which warranted its replacement. I find the replacement cost for the used stove, as detailed in the Landlord's evidence is reasonable. I accept that it would have likely costed more than the amount claimed if the Landlord had tried to repair the broken glass stovetop.

Based on the evidence and the testimony, I find it clear that the Tenant left behind lots of garbage and left a substantial mess to clean up. I accept that it would have required significant time and effort clean up the unit, dispose of all remaining items, and procure a new stove. I find the Landlord's expenses to remedy the rental unit are reasonable and are sufficiently supported by her evidence, considering the issues left behind. I award item #1 through to item #7, in full and as listed above.

With respect to item #8, I turn to the following:

Policy Guideline #3 - Claims for Rent and Damages for Loss of Rent states as follows:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I have reviewed the Landlord's claim for an additional week's worth of rent (first week of June). I find the Landlord's claim for this item is reasonable, and I accept it would have taken at least this long to clean, repair, and dispose of items left behind by the Tenant. I also accept that the unit would not have been re-rentable, or "showable" to prospective tenants until the cleaning was done. I award the Landlord the full amount claimed for this item, \$315.00, which is a per diem rate for 7 days for the period the unit could not be shown.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items listed above	\$2,345.48
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$300.00)
TOTAL:	\$2,145.48

Conclusion

The Landlord is granted a monetary order in the amount of **\$2,145.48**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: October 5, 2020

Residential Tenancy Branch