



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord applies for a monetary award for unpaid rent, lost rental income, unpaid utilities, as well as damage and loss for cleaning and repairs to the premises after the tenant vacated. She also seeks to recover certain out of pocket expenses associated with this application, and the filing fee paid.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord used the services of Mr. BT for translation. Mr. BT was sworn as a translator to truthfully and faithfully translate the words spoken by the landlord, the tenant and this arbitrator to and from the landlord's native tongue.

This matter had been adjourned from the October 20 hearing date to ensure the tenant had received the landlord's amended claim and documents. At this hearing the tenant confirmed receipt of those documents and reported that he had not filed any documents in response.

At the October 20 hearing the tenant admitted owing the landlord \$11,766.40 for rent and utilities for the months April to July 2020, inclusive. At the November 4 hearing the tenant acknowledged owing the landlord \$2665.00 for August rent and \$683.19 for his share of August utilities, a total of \$3348.19, as claimed. He denied all other claims.

Issue(s) to be Decided

Does the tenant owe the landlord for September rent and utilities? Does he owe the landlord for October rental loss? Did the tenant fail to leave the rental unit reasonably clean and free of damage but for reasonable wear and tear? If so, what loss has the landlord suffered as a result? Is the tenant responsible for the costs incurred by the landlord for new keys and a new garage door motor?

Background and Evidence

The rental unit is a four bedroom, plus den portion of a house. The lower part of the house contains a suite rented to others. This tenancy started April 1, 2017. There is a written tenancy agreement. The monthly rent started at \$2500.00 and by 2020 was \$2665.00. The landlord holds a \$1250.00 security deposit.

The landlord failed to conduct a move-in inspection and prepare the condition report required by s. 23 of the *Residential Tenancy Act* (the “RTA”).

The landlord testified through her interpreter, reviewing her claim as set forth in the monetary order worksheet she had filed. She reviewed her documentary evidence including photos of wall damage, stove damage and garbage alleged to have been left by the tenant or perhaps by occupants residing at the home with his permission.

On September 2, 2020 the landlord served the tenant with a ten day Notice to End Tenancy for non-payment of rent pursuant to s. 46 of the *RTA*. The tenant stated that he did not challenge this Notice and that he (and the occupants who were residing there) vacated the rental unit accordingly by September 6.

It is the tenant’s view that the tenancy ended at the start of September and so he is not responsible for rent or utilities for September or October. He admits to the wall damage shown in the landlord’s photos but says the stove damage, a significant burned and melted area on top of the stove, was like that when he moved in. He says the garbage left behind was garbage placed outside for normal garbage pickup. He swears he returned the house keys and garage door fob to the landlord when they met a property around September 6. He says the house was cleaned before he left.

The tenant says that the texts filed by the landlord do not show his replies, implying they are somehow misleading.

In response the landlord says she was at the property on September 6 and saw the move out but that the keys and fobs were not returned at that time or after. She notes that though there was no move-in condition report, the tenancy agreement notes that the curtains were broken at the start of the tenancy but makes no mention of any damage to the stove. She indicates that the tenant had the use of two garage areas with separate garage doors, motors and fobs.

Analysis

September Rent and Utilities

This tenancy came to an end by operation of s. 46 of the *RTA*, ten days after the ten day Notice; that is, on September 12. The tenant is responsible for September rent of \$2665.00 and utilities of \$182.41 for a total of \$2847.41. The ending of the tenancy was caused by his failure to pay rent and he cannot rely on his own default to shorten the one month notice he was obliged to give under s 45 of the *RTA* had he wanted to end the tenancy.

New House Keys, Garage Motor

I find that the tenant did not return the house keys or the garage fobs to the landlord. Of note, on September 15, the landlord texted the tenant asking for the keys and remote.

The costs shown in the bill submitted by the landlord show that rekeying the house cost \$480.00 plus tax. I award the landlord \$480.00 plus GST of \$24.00 and PST of \$33.60 for a total of \$537.60.

I dismiss the landlord's claim for a new garage door motor. Her explanation that since she had no fob for the door the entire motor had to be replaced, is unlikely. First, if no fobs were returned, why did she only replace one motor when the tenant had fobs for two separate doors and motors? Secondly, a garage door motor, certainly one that is ten years old as she says this one is, is reprogrammable through relatively simple steps. So that no old fob can operate it. There was no obvious need to replace a motor.

Hole in Wall and Burnt Oven

The tenant agrees the wall damage; a sizeable hole, occurred during the tenancy. On the undisputed evidence of the landlord I find that the cracks and chips shown in the landlord's photos occurred as well.

I accept the estimate for repair given by the landlord's workman who conducted general, more extensive work in the home after this tenancy, that \$300.00 was the portion of that work that was dedicated to the wall repair. I award the landlord \$300.00 for the wall repairs.

The tenant argues that the stove damage preceded this tenancy. The landlord's failure to conduct a move-in inspection and prepare a report, which certainly would have noted such damage to the stove, works against her on this claim.

However, the stove damage is severe. It is apparent that something caught fire on one of the rear burners, causing the dial panel to turn brown and causing the heavy plastic molding around one edge of the dial panel to darken and to warp significantly. I find that such damage would have been observed by the tenant immediately and that it would have been noted in the tenancy agreement in the same way the tenancy agreement notes that the blinds were broken. I find the damage occurred during this tenancy.

I consider the landlord's claim of \$200.00 for this damage to be reasonable and I award her \$200.00.

Cleaning Cost

The landlord's evidence shows the tenant left bagged and loosely scattered garbage around the outside of the house and a bed and frame inside. Though the tenant claims the garbage was there for pickup, the photos show that for the most part the garbage was not in a location, for example: curbside or in a garbage can at the rear of the property, where it would be picked up.

The landlord also claims for cleaning inside the home. A tenant's obligation under s. 37 of the *RTA* is to leave the rental unit "reasonably clean." I am unable to determine on the evidence that the tenant failed to do so and so I dismiss the landlord's claim for interior cleaning.

In result, I award the landlord \$50.00 for cleaning costs to remove garbage and the bed and frame.

Printer Ink and Registered Mail Costs

As stated at hearing, the *RTA* does permit an award in the nature of costs and disbursements incurred in the pursuit of decision under the dispute resolution process, other than to permit a discretion to award all of or a portion of the applicant's filing fee. I therefore dismiss these two items of the claim.

October Rental Loss

Had the tenant given lawful notice in September to end this tenancy, the earliest that notice might have taken lawful effect would have been the end of the next rental period, namely October 31 and he would have been obliged to pay October rent. He cannot avoid this obligation by causing the tenancy to end by not paying his rent. I accept the landlord's undisputed evidence that she found a new tenant to start November 1. There is no argument that she failed to mitigate her rental loss. I find the tenant is responsible for the October rent of \$2665.00

Conclusion

The landlord is entitled to a monetary award of \$21,714.60 plus recovery of the \$100.00 filing fee for this application. I authorize the landlord to retain the \$1250.00 security deposit in reduction of the award. She will have a monetary order against the tenant for the remainder of \$20,564.60

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: November 04, 2020

Residential Tenancy Branch