



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$1,200.00; and for a monetary order for damage or compensation under the Act in the amount of \$1,000.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses for the Tenant, I.T. and S.K. ("Witnesses"), were also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and the Parties confirmed them during the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing.

I asked the Parties to spell their names and the Tenant said she spelled her name differently than it was set out in the Application. As such, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

Neither Party submitted a tenancy agreement for this periodic tenancy, which they said began on September 1, 2017. The Parties agreed that the Tenant paid the Landlord a monthly rent of \$1,341.00 at the end of the tenancy, which was due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit. They agreed that the rental unit is a suite in a house that has two bedrooms and one bathroom. The Parties agreed that they did not do an inspection of the rental unit at the start or end of the tenancy, nor did the Landlord create a condition inspection report ("CIR") based on the condition of the rental unit at the start of the tenancy.

#1 UNPAID RENT → \$1,200.00

The Landlord's first claim in her Application is for \$1,200.00 in unpaid rent from the Tenant. The Landlord said the Tenant owes her a full month's rent for June 2020. She said this is because the Tenant gave the Landlord notice to end the tenancy on May 14, 2020, with an effective vacancy date of Jun 14, 2020.

The Landlord said the Tenant owed her for two weeks' rent to June 14, 2020, and for another two weeks, because she said the Tenant did not leave the key, so the Landlord could not get in. The Landlord also said the Tenant left "stuff" inside the rental unit.

The Tenant said that when the Landlord came for May's rent that she told the Landlord she wanted to move out. The Tenant said that she found another place to live. She said she paid the deposit for it and signed a new tenancy agreement on May 11, 2020.

The Tenant said:

I paid for the month of May rent. She was pressuring me, so I took the money from a friend and paid it to her. I paid the deposit for the new place, but I didn't have enough. My husband was quarantined, because of the Covid, but I gave her \$800.00 cash and said to use \$600.00 of my deposit, which equals \$1400.00. The extra included \$50.00 for the garbage [left behind]: \$25.00 for the bed, and \$25.00 for a few things that were broken - a lampshade, the night stand.... They had their own business of disposal and demolish, and she agreed [that I could leave things behind to be disposed of by her brother]. Until then everything was fine.

When I was moving out, she said 'my brother was asking for \$100.00, not \$50.00'. I handed over \$99.00; I was short a dollar, and I gave her that and the key. I told her to please visit my place; I was nice with her. I handed over my address and invited her for tea.

The Tenant's Witnesses said the following about the Tenant's last day of this tenancy.

The Witness, I.T., said:

I recall her spending the day cleaning, but it was mostly clean when I arrived. I was helping her move the things out of the house. I recall her giving an envelope of money and handing over a key to the Landlord.

There was a dispute about the oven not being cleaned. That was [the Landlord's] only complaining. She agreed that everything else in the house was fine, but [the Tenant] had her daughter clean it extra. It was from what I saw, it was as clean as it could be.

The Witness, S.K., said:

It was a busy day for me. I was running back and forth with heavy stuff in hand. I recall the oven incident. I recall the Landlady was not happy with the oven. At some point, we came into one room, where she started complaining to me as well, but I was just a helper. It was clean to me. [The Tenant] and her kids and me - we cleaned the oven. I was back and forth with the crowd, so I don't remember the conversation, but I remember [the Tenant] stuffing money into the envelope. We were focused on moving the stuff into the truck. That's pretty much it.

The Landlord said the Tenant was in a rush when she left. The Landlord said:

I did not accept any key. I said: 'Please come back and then you have to pick up your garbage and then you have to give me the key.'

Nobody gave me the key. I said: 'I am not touching any of your stuff.' As for disposing of her stuff, I said for her to contact and fix that with my brother. It's his company.

#2 CLEAN UP COSTS → \$1,000.00

The Landlord said this claim includes the following:

- \$320.00 = 16 hours of cleaning at \$20.00 per hour;
- \$500.00 = removing the bed that was left behind;
- \$156.00 = to change the locks.

A. CLEANING

The Landlord said that the amount claimed for this matter was an estimate. She said they did the cleaning themselves and that it took them 16 hours. The Landlord said that this is less than the estimates they obtained for cleaning this size rental unit. The Landlord did not submit copies of the estimates into evidence.

The Landlord submitted a number of photographs of the rental unit that were not labelled. However, they included:

- an unclean dryer lint filter;
- the end of a bathtub that looked reasonably clean;
- a dirty kitchen sink with a plastic bag in it;
- the edge of a dirty wall with dirty molding;
- the corner of a room with dirty walls and paint peeling away;
- a ripped mattress on a frame of some kind;
- holes in the wall; and
- a plug-in with what looks like green paint on it.

There were other photographs, which were taken so close to the items that it was difficult to determine what they were.

The Landlord said:

The locksmith came on June 15. And we took [the mattress] to the company dump – my brother did it and hired workers. Every day they were coming, and they did this job. We paid them \$20.00 per hour.

The Landlord did not submit an invoice from her brother's company for this work.

The Tenant said:

So, she is stating that she had an estimate from the janitorial company. The estimate was \$350.00 to \$375.00, but she sent me another receipt that was on their own letterhead and they said the garbage removal was \$500.00. So why did they charge me \$500.00 later on, when it's their own company?

She said to me to talk to her brother; there was no communication in relation to that. I had all communication with her, solely. When I moved in, I spent many days cleaning that place, and I have submitted evidence showing the dirty, sticky walls and multiple nail holes all around. . . . I was complaining to them . . . there was black mould all around, and I had complained to her and she didn't do anything.

Re the key – it took them a long time to do that, but no notice, no email, no calls, and they are entering the place. And I gave them the key when I left.

Then I had a witness for all of this. [I.T.] is my close friend and she was complaining all the time for the mould. She was super sensitive about it. She said to leave or ask the Landlord about it.

. . .

I do not find them fair; they have different claims without any evidence. She didn't contact me, just asking me for more money that I refused. They asked for \$100.00, and I cleared everything out. There was no email re the key or rent, just a receipt on their own letterhead that was claiming all that money.

And as for leaving the mattress, it was all talked about. It was \$25.00 for the bed and \$25.00 for the smaller stuff. The bed was left behind, but [its removal] was all paid for.

The Tenant submitted photographs of the rental unit with the following writing on the Side of the photos:

[The Landlord] claimed in dispute notice that I left many nail holes on the walls. This claim isn't true. This picture captured from a private family video, recorded on 9th of October 2017, right after one month and one week when I moved in to their place in 2017 September. Multiple nail holes can be seen as well as discoloration patches all over the place.

Next to a second photograph, the Tenant wrote:

This picture [is] from October 9 2017 (one month and one week after we moved in) shows big dirty stain and discoloration on the wall. On the side from the electric socket one wire was hanging out and they didn't remove or repair throughout our almost 3 years of stay.

[The Landlord] claimed in dispute notice that I left many nail holes on the walls. This claim isn't true. This picture was captured from our family private video, recorded on the 9th October 2017, right after one month and one week when I moved in to their place in 2017 September. Multiple nail holes can be seen as well as discoloration patches all over the place.

In a written submission, the Tenant said:

They handed me their basement without cleaning and organizing it. The walls were dirty scribbled and had webs, appliances were sticky, and fridge had remains of food. Exhaust fan above the oven was full of dirt and grease. [The Landlord] told me she is sick, but she will clean it before I move in, but she didn't, and I cleaned everything before unpacking. ([I.T.] helped me moving that time as well, she mentioned it in her letter) .

The Tenant gave additional evidence on complaints she had about her family's treatment by the Landlord, and about the ongoing breaches of their right to quiet enjoyment of the rental unit. However, the Tenant did not apply for dispute resolution to address these problems; therefore, I find that they are not relevant to the issues before me.

The Tenant submitted a copy of a letter from the Witness, S.K., dated August 8, 2020, which states:

To Whom it May Concern

My name is [S.K.] and I live in [a city]. On 31st May, I was at [the Tenant's] place at [rental unit address]. It was a small basement. I and [I.T.] helped her in packing, cleaning & moving to her new place. Our friend [M.] was driving the [rental truck]. The basement was all clean, all appliances were in working & Clean Condition & we didn't leave anything behind except a bed. The land Lady checked appliances, washroom and bedroom in front of me, & [the Tenant] handed over basement key & some Money to her which I'm not sure how much it was. I have stated whatever I witnessed. In case you want to contact my phone number is [phone number].

Regards,

Signature

[S.K.]

[Cell number and email address]

[reproduced as written]

The Tenant submitted another letter from a former neighbour, which states:

I am [N.R.], I am another tenant of [name, address]. I know [the Tenant] for 3 Years. She was my neighbor. She is very nice and friendly. [The Landlord] took me to [the Tenant's] place [rental unit address], within a week time after she moved from there to show the condition of the house she showed me. Slight dust in closet, a spider web at the corner of room and a bed. The house inside was clean. Fridge was clean. I didn't find any objections.

If you have any questions please feel free to contact me at [telephone numbers] and email [address] is [email address]

Best regards,

[N.] [signature]

[reproduced as written]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 UNPAID RENT → \$1,200.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

In terms of the Tenant's notice to end the tenancy, section 45 sets out how a tenant must give notice to end a periodic tenancy, such as this. Section 45 states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

As such, a notice to end tenancy that was given in May 2020 would have had an effective vacancy date of June 30, 2020 pursuant to section 45. As a result, I find that the Tenant was responsible for paying the Landlord rent until the tenancy ended on June 30, 2020, pursuant to section 45(1) of the Act. I, therefore, award the Landlord

with **\$1,200.00** from the Tenant pursuant to sections 45 and 67 of the Act.

Returning the Key

Section 25 of the Act sets out landlords' and tenants' requirements surrounding rekeying locks for rental units. Section 25 states:

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

[emphasis added]

#2 CLEANING COSTS → \$1,000.00

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that any damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

In this case, the Parties did not conduct a condition inspection of the rental unit at the start of the tenancy; therefore, the Landlord has failed to provide the best evidence of what damage was done during the tenancy. However, I have before me photographs of the rental unit from the Tenant, which she said were taken one month after the tenancy started. I also have photographs that the Landlord said were taken at the end of the tenancy. I find that these photographs offer some proof of the condition of the rental unit at the start and end of the tenancy.

Section 37 (2) of the Act states:

Leaving the rental unit at the end of a tenancy

37 (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

. . .

[emphasis added]

RTB Policy Guideline #1 helps interpret section 37 of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

The condition of a rental unit at the start of the tenancy is not relevant to a tenant's requirement to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear". However, the Landlord bears the burden of proof in this matter, as she claimed monetary compensation from the Tenant.

I have contradictory evidence before me about the condition of the rental unit at the end of the tenancy. However, I find that the Tenant provided more evidence to support her claim that the Landlord did that the Tenant left the rental unit reasonably clean and undamaged.

The Landlord did not submit copies of cleaning estimates she received, and I find that

she did not submit sufficient evidence to support the amount of cleaning she claimed for in an apartment of this size. If the rental unit was as unclean as the Landlord claimed, I find that it may have taken an hour to clean each room, perhaps with an additional hour for the kitchen. This would amount to approximately seven hours to clean the kitchen, the bathroom, two bedrooms, the living room, the hallway and closets, and miscellaneous other, rather than the 16 hours that the Landlord claimed.

In addition, the Landlord acknowledged that it was her brother who removed the items left behind by the Tenant, not the Landlord. Accordingly, I find it was the Landlord's own evidence that this matter was between the Landlord's brother and the Tenant. Therefore, I find it inappropriate for the Landlord to claim the \$500.00 from the Tenant for this work, and I dismiss this amount without leave to reapply.

Based on the evidence before me overall in this matter, I find that the Landlord has overstated the amount of work she did cleaning the rental unit at the end of the tenancy. I find it is more likely than not that the Tenant left the rental unit reasonably clean and undamaged. I, therefore, dismiss the Landlord's claim in this regard, without leave to reapply.

As the Landlord has been partially successful in her claim, I award her with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Summary and Set Off

The Tenant said that she asked to have her \$600.00 security deposit used to pay for a portion of rent for May 2020; therefore, I find that it is no longer available to be set off against the Landlord's awards.

The Landlord is awarded one month's rent for June 2020 in the amount of \$1,200.00, and recovery of the \$100.00 Application filing fee. I, therefore, grant the Landlord with a monetary order of **\$1,300.00** from the Tenant pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is partially successful in her claim for monetary compensation from the Tenant. The Landlord is awarded \$1,200.00 in recovery of one month's rent from the Tenant, pursuant to section 67 of the Act. The Landlord's claim for compensation for cleaning the rental unit is dismissed without leave to reapply, as the Landlord failed to provide sufficient evidence to support this claim.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$1,300.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 2, 2020

Residential Tenancy Branch