



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CA Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, 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 compensation under the Act of \$262.99, retaining the security deposit for this Application; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, S.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over fifteen minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on October 21, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the

Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was not a legal entity, and is different than the corporate Landlord noted in the tenancy agreement. The Agent advised me of the name of the property management company representing the owner; therefore, I amended the Applicant's name in the Application to reflect this company name, pursuant to section 64(3)(c) and Rule 4.2.

The Agent provided the Parties' their email addresses in the Application, and confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before the Agent testified, I advised him that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing.

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

The Agent confirmed that the periodic tenancy began on April 1, 2015, with an initial monthly rent of \$1,200.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit, and that the Landlord still held the security deposit, pursuant to this Application.

In the hearing, the Agent said that the Parties conducted a move-in inspection of the condition of the rental unit at the start of the tenancy, but that he did not submit a copy of the condition inspection report ("CIR") into evidence.

The Agent said a move-out inspection was not done, although the Landlord had made "several attempts", but it did not happen. The Agent said that this is why he included photographs of the condition of the rental unit at the end of the tenancy.

The Landlord submitted a monetary order worksheet with four claims in it, as follows:

	Receipt/Estimate From	For	Amount
1	No receipt	2 missing key fobs	\$100.00
2	No receipt	1 missing key	\$15.00
3	Invoice submitted	BC Hydro from day cancelled to end Sep – tenancy ended	\$7.99
4	[Cleaning company]	Cleaning ste @\$35/hr	\$140.00
		Total monetary order claim	\$262.99

#1 Two Missing Key Fobs → \$100.00

In the hearing, the Agent said:

There are several documents indicating that the fobs were provided to the Tenant. There were four – pictures, and a signature for the signing - and she was given two fobs and had not returned them. There are three pages of those documents and photos of the keys she did return. See pages 9 – 12 for photos of the keys.

On the form that she signed it says they're \$50.00 each.

In total she took out four fobs, and she returned two and didn't return the other two. The fobs are for the laundry and parking doors.

The Agent submitted a copy of a document labelled: Screen_Shot_of_Key_tracking_software. This shows the Tenant's rental unit number with four items listed. It also states that the items listed are for access to common doors. There are check marks beside two of the items. The first item (without a check mark) has a handwritten note: "Step Son". The date is whited out on this form.

Another page the Agent submitted has the Tenant's rental unit number on it, and it indicates that on April 2, 2015, the Tenant received a fob, which she returned on September 30, 2020. There is another fob signed out on this form to another person. This was also returned on September 30, 2020.

This form also lists the fees the Landlord charges for fobs or keys not returned. The form states:

The tenant agrees to pay [Landlord] \$15 per key for each key that is not returned.

The tenant agrees to pay [Landlord] \$50 per fob for each key that is not returned.

This form has the Tenant's signature at the bottom and is dated April 1, 2015.

The next piece of evidence is a photograph of what looks to be three keys and two fobs. This supports the above evidence, which states that the Tenant returned the keys and two fobs at the end of her tenancy. This photo is labelled as keys left on the counter by the Tenant.

Another piece of evidence is a request by the Tenant to the property managers for a set of apartment keys and entrance fob. This is dated June 8, 2018, and it has the Tenant's name, her unit number and her signature.

#2 One Missing Key → \$15.00

The Agent said: "This is a key to the rental unit – a special key we make ourselves. We had to buy keys and cut them ourselves. She signed an agreement to pay \$15.00 per key not returned."

The Fob/Key Registration form states that the Tenant received two keys to her suite and one mailbox key on April 2, 2015, which she returned on September 30, 2020.

The Agent submitted a document labelled: "Sign_Out_sheet_for_keys" ("Key Sign-out"). This is a pre-printed table on a sheet with unit numbers in the first column, numbers (1, 2, or 3) in the next two columns, and signatures and dates in the remaining columns. The row with the Tenant's rental unit number has the number "3", a signature that looks like the Tenant's name, and is dated November 8, 2019. I infer from the Agent's reference to this document, that the Tenant signed out three keys on November 8, 2019.

The Agent submitted email evidence, including emails from the Tenant to the Agent and the building manager, in which the Tenant tries to arrange a time to do the move-out inspection and key return. However, the building manager, whom the Tenant was supposed to meet for the inspection, was unable to meet at the Tenant's suggested

time. The building manager suggests doing it on September 30 at 1 p.m. An email reply from the Tenant dated September 30 at 13:05 states:

Hi
It's after 1 pm and no one has shown up for the agreed upon time.
I have left the keys on the counter. I've attached a photo of them.
My new address is [provides address]
Please send the cheque there.
I also require the two keys you have for my storage locks.
[Tenant]

#3 BC Hydro from day cancelled to end tenancy → \$7.99

In the hearing, the Agent said: “[The Tenant] moved out early - about the 9th - and she cancelled the Hydro on the 9th. We paid for the Hydro from the 9th to the 30th.”

The Tenant had given notice to end the tenancy dated August 25, 2020, with the effective vacancy date of “end of September or earlier if you can rent it”.

Clause 11 of the tenancy agreement states that utility payments are not included in the rent and are the responsibility of the Tenant. This clause includes the following:

The discontinuation of utility service resulting from the Tenant's cancellation or failure to maintain payment of his utility account is a breach of a material term of this Agreement.

The Agent submitted a receipt for the electricity bill, which indicated that the cost of electricity for the rental unit from September 9 to October 1, 2020, was \$7.99.

#4 Cleaning Suite → \$140.00

The Agent said that the Parties were unable to do a move-out condition inspection with the Tenant; therefore, they submitted photographs of the condition of the rental unit at the end of the tenancy.

The first photograph is of a stove hood/fan taken from beneath. The fan mechanism in this photograph does not look sparkling clean, but I find that it does not look dirty, either.

The second photograph is of the inside of the oven. Most of the inside looks shiny clean, except for a stain or mark near the front of the oven. The next photograph is labelled: "Oven_once_cleaned", which shows the inside of a completely clean oven.

The fourth photograph is of the edge of the balcony looking down. It is a tiny space in which it is uncertain whether an adult could stand. It looks like it is made of cement, which has dark spots on it – likely dirt and/or mould.

There was another photograph that was not identified and was difficult to determine of what it was taken.

The Agent submitted other photographs of a dirty patio door track, and another dirty door track within the unit.

The Landlord submitted an invoice from a cleaning company dated October 1, 2020, with the rental unit address and notes indicating "4 hours, \$120.00". In the hearing, the Agent said that the amount in his monetary order worksheet was an estimate, so they decrease that amount by \$20.00, given the evidence of the actual cost to clean.

As noted in the evidence for the hydro bill, the Agent said that the Tenant moved out on September 9, 2020. The Agent's evidence in the hearing was that another tenant moved in to the rental unit sometime between September 9 and 28th.

In an email dated September 28, 2020, the Tenant writes to the Agent to explain the lengths she went to, to clean the rental unit. **[evidence #14]**

In an email from the Tenant to the Agent, she says:

I've returned to suite [rental unit number]

For the agreed move out hand off.

The suite is significantly dirty than the first time I tried to hand the keys off 48 hours ago.

There is fresh paint on the floor and any cleaning/sparkling that occurred in the bathroom is no longer apparent due to work being done in the bathroom.

[Tenant]

I infer that the Tenant is suggesting that the workers who are painting and doing other work in the rental unit caused it to be dirtier than the condition in which she left it.

Analysis

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

#1 Two Missing Key Fobs → \$100.00

Based on the Landlord's undisputed evidence of key fobs that were given to the Tenant throughout the tenancy, and the record of what was returned, including a photograph of keys and fobs left on the counter by the Tenant, I find that the Tenant failed to return two key fobs to the Landlord at the end of the tenancy.

Section 7 of the *Residential Tenancy Act* Regulation ("Regulation") states:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;

The Agent did not submit an invoice for the cost to replace the key fobs; however, the Regulation does not limit the amount a landlord can charge for key fob replacement, other than to the "direct cost" incurred by the Landlord. Further, the Tenant signed the key registration form indicating that she would be charged \$50.00 each for any key fob that was not returned.

As a result, I award the Landlord with **\$100.00** for the two key fobs that the Tenant was loaned, but which she failed to return, pursuant to section 67 of the Act.

#2 One Missing Key → \$15.00

The Fob/Key Registration form states that the Tenant received two keys to her suite and one mailbox key on April 2, 2015, which she returned on September 30, 2020. The Key Sign-out form indicates that the Tenant was given three keys on November 8, 2019. The only evidence I have of the keys being returned is in the photograph the Tenant took of the keys she left on the counter on September 30, 2020, which I find show that the Tenant returned two unit keys and one mail key. I find that the Tenant returned the keys that were given to her on either April 2, 2015 or November 8, 2019. This would

suggest that the Tenant failed to return more than one key; however, as the Landlord has claimed only one unreturned key, I will award them **\$15.00** for the Tenant's failure to return one specialized rental unit key, pursuant to section 67 of the Act.

#3 BC Hydro from day cancelled to end tenancy → \$7.99

I find that the Tenant gave notice to end the tenancy effective September 30, 2020; therefore, I find that she was responsible for the costs associated with the rental unit until September 30, 2020.

The Landlord's undisputed evidence before me is that the Tenant paid for electricity for the rental unit until September 9, 2020, when she moved out. I find that clause 11 of the tenancy agreement requires the Tenant to maintain utility accounts for the duration of the tenancy.

However, the Agent did not indicate that he had given the Tenant a written demand for payment of the outstanding utilities, and 30 days to pay them, pursuant to section 46(6) of the Act. Accordingly, I dismiss this claim with leave to reapply.

#4 Cleaning Suite → \$140.00

Section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret section 37:

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).

...

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]

Based on the evidence before me overall, I find that the Landlord did not provide sufficient evidence of an unclean rental unit to warrant four hours of cleaning by a professional cleaning company. It raises questions in my mind that the only photographs submitted of the condition of the rental unit were related to the oven, sliding door tracks, and dirt on cement of a tiny balcony. There were no photographs of an unclean bathroom, or floors, walls, cupboards, counters, the refrigerator, and so on.

In addition, I find that the evidence of the oven fan/hood shows that it was not noticeably greasy or unclean, based on the photograph submitted. As noted above, section 37 of the Act requires the rental unit to be left “reasonably clean”, which is not necessarily the standard of the arbitrator, the landlord or the tenant.

I find the Landlord’s before and after photographs of the oven to be confusing. The “before” photograph is of an oven that is nearly perfectly clean and shiny, but for a mark or stain near the front. I find it inconsistent with common sense and ordinary human experience that a tenant would clean all but a small percent of the oven to the point of having it shiny, but for the one spot. I find it more likely than not that the “after” photograph was that of another oven in the residential property.

Further, the Tenant’s evidence in her email dated September 28, 2020, suggests that the Landlord required the rental unit to be cleaned because of the presence of maintenance workers, not (solely) because of the condition in which the Tenant left the rental unit.

When I consider the evidence before me overall for this claim, I find that the Landlord has not provided sufficient evidence that the rental unit required four hours of a professional cleaner’s time, because of the condition of the rental unit left by the Tenant. However, I find that the dirty door tracks indicate that there was some cleaning to be done. Therefore, pursuant to Policy Guideline #16 and section 67 of the Act, I award the Landlord a nominal amount of \$100.00 for cleaning. I dismiss the rest of this claim without leave to reapply.

Summary and Set Off

Given that the Landlord has been partially successful in their Application, I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72.

	Receipt/Estimate From	For	Amount Awarded
1	No receipt	2 missing key fobs	\$100.00
2	No receipt	1 missing key	\$15.00
3	Invoice submitted	BC Hydro from day cancelled to end Sep – tenancy ended	\$0.00
4	[Cleaning company]	Cleaning ste @\$35/hr	\$100.00
	RTB	Application filing fee	\$100.00
		Sub-total	\$315.00
		Less security deposit	(\$600.00)
		TOTAL	(\$285.00)

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$600.00 in partial satisfaction of the Landlord's monetary claim. The Landlord is authorized to deduct \$315.00 from the Tenant's \$600.00 security deposit, before returning the remainder to the Tenant. The Tenant is awarded a monetary order of **\$285.00** in this regard, pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in their claim for compensation from the Tenant in the amount of \$215.00. The Tenant is also awarded recovery of the \$100.00 Application filing fee for this claim for a total award of \$315.00. The Landlord's other claims are dismissed with leave to reapply. This Decision does not affect any application deadlines that may apply.

The Landlord is authorized to retain \$315.00 of the Tenant's \$600.00 security deposit in complete satisfaction of this award. The Landlord is Ordered to return the remaining \$285.00 of the Tenant's security deposit to the Tenant as soon as possible. The Tenant is awarded a Monetary Order of **\$285.00** in this regard.

This Order must be served on the Landlord by the Tenant 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: February 08, 2021

Residential Tenancy Branch