



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, MNDL, MNR-DR, MNDCL, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2021 (10 Day Notice), for a monetary order in the amount of \$5,640.84 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

Landlord SCJY-K(landlord), the spouse of the landlord, KS (spouse) and the tenant CPL (tenant) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that evidence. The tenant also confirmed that they did not serve the landlord, or the Residential Tenancy Branch (RTB) with documentary evidence. As a result, I find the tenant was sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were

directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord clarified that the actual monetary claim was \$5,640.84, which is lower than the original claimed amount of \$7,390.84. The parties confirmed that the amount was reduced at the hearing, which I find does not prejudice the tenant.

Furthermore, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the landlord and that the decision only would be emailed to the tenant.

Also, as the landlord confirmed that they have re-rented the rental unit, I find that an order of possession for the landlord is not longer required and as a result, I will not consider that portion of the landlord's application further.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. During the tenancy monthly rent was \$1,650.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$825.00 and a pet damage deposit of \$412.50, which the landlord continues to hold. The landlord confirmed that they are not applying to offset either deposit as the tenant has yet to serve them with their written forwarding address and did not provide their written forwarding address during the hearing.

The tenancy ended based on an undisputed 10 Day Notice. The landlord's reduced monetary claim for \$5,640.84, is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. House cleaning	\$283.50
2. Replacement fob and key	\$85.00
3. Water damaged baseboards	\$920.00
4. Replacement door blind	\$50.97
5. Pandemic rent relief repayment plan	\$2,651.37
6. March 2021 unpaid rent	\$1,650.00
TOTAL	\$5,640.84

Regarding item 1, the landlord has claimed \$283.50 for the cost to clean the rental unit. The landlord stated the tenant failed to advise them that they were vacating and as a result, the landlord could not schedule a move-out condition inspection. The landlord testified that they paid the cleaning company listed on the invoice \$283.50 to clean the rental unit to a reasonably clean condition. The spouse of the landlord stated that the tenant failed to clean the fridge, baseboards, walls with smudges, bathroom including toilet and general dirt and grime in the rental unit.

The landlord confirmed that they did not complete a written incoming Condition Inspection Report (CIR) at the start of the tenancy with the tenant. The tenant confirmed that no incoming CIR was completed. The spouse of the landlord stated that while the rental unit was not "horrible" it certainly needed cleaning.

The tenant claims that the rental unit was left clean and that everything had been cleaned before they vacated on March 7th or March 8th, 2021. The tenant also stated that they were not sure why the cleaning would cost \$283.50 and was not emailed by the landlord about the cleanliness of the rental unit.

Regarding item 2, the landlord has claimed \$85.00 to have a replacement fob and key issued due to the tenant failing to leave the fob and key in the rental unit. In support of their claim the landlord referred to a photo of the receipt from the Strata for \$85.00 for a "FOB and Key" dated March 27, 2021 and included the address of the rental unit.

The tenant did admit that they could have done a better job at handing the fob and key to the landlord and claims they were left in the rental unit. The landlord and their spouse testified that a fob and key were not located in the rental unit, which prompted them to pay for replacements and claim that cost from the tenant.

Regarding item 3, the landlord has claimed \$920.00 for water damaged baseboards. The landlord's spouse testified that the rental unit was about 10 years old, and the landlord referred to the purchase agreement inspection report that lists the bathroom as having no damage, which according to the landlord was one month before the tenancy began in 2019. The landlord referred to a quote which they stated was not in writing but was provided via the telephone by a contractor which sets out 8 hours at \$65.00 per hour and materials of \$400.00. The landlord confirmed the work has not been completed and that the rental unit has been re-rented for more rent, which is \$1,750.00 per month.

The tenant denies causing the water damage and states that her neighbour had the exact same issue and is a building flaw and was not from water spilling out of the bathtub. The tenant testified that the baseboards were really cheap and started to bubble and warp, which was embarrassing considering the rent they were paying per month. The tenant stated that they 100% deny spilling water out of the tub and that the cause was a building issue not a water from the tub or sink issue.

Regarding item 4, the parties reached a mutually settled agreement regarding the tenant paying the landlord \$50.97 to replace a damaged door blind, which I will address further in this decision below.

Regarding item 5, the landlord has claimed \$2,651.37 in rent arrears owing from the repayment plan related to the pandemic and supplied the RTB Repayment Plan Form #RTB-14 (Repayment Plan) which sets out that for April, May and June 2020 rent, that the tenant continues to owe a total of \$2,651.37 in rent arrears. The tenant confirmed that they did not supply evidence to support that the rent arrears were paid and instead questioned the landlord on whether their mortgage payments were deferred or not, which I stated was not relevant to this matter.

Regarding item 6, the landlord has claimed \$1,650.00 for unpaid March 2021 rent. The tenant admitted that rent was not paid and in fact, the landlord issued the 10 Day Notice as a result, which ended the tenancy. The tenant states they vacated on either March 7 or 8, 2021 after receiving the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was March 19, 2021.

After 49 minutes, the hearing concluded.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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. Accordingly, an applicant must prove the following:

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

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will deal with the lack of an incoming CIR. Section 23 of the Act applies and states:

Condition inspection: start of tenancy or new pet

- 23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

As a result, I find the landlord breached section 23 of the Act by failing to complete an incoming CIR. Therefore, **I caution** the landlord to ensure that in all future tenancies, the landlord complies with section 23 of the Act.

Item 1 - The landlord has claimed \$283.50 for the cost to clean the rental unit and submitted an invoice in that amount. The spouse of the landlord stated that the tenant failed to clean the fridge, baseboards, walls with smudges, bathroom including toilet and general dirt and grime in the rental unit.

The tenant claims that the rental unit was left clean and that everything had been cleaned before they vacated on March 7th or March 8th, 2021. I note that the landlord failed to provide any photo evidence to support what the rental unit looked like at the end of the tenancy. I also note that the invoice reads “Residential Cleaning One Bedroom Home” and the amount as the only description of the work completed versus a full description of what required cleaning. As a result of the above, I find the landlord has failed to meet the burden of proof as I am left with the landlord stating one thing and the tenant disputing the level of cleanliness alleged by the landlord and their spouse. Therefore, I dismiss this portion of the landlord’s claim due to insufficient evidence, without leave to reapply. Without photo evidence, I am unable to determine if the rental unit was left in a reasonably clean condition versus the landlord bringing in a cleaner to bring the rental unit to a higher standard of cleaning than section 37(2)(a) of the Act requires.

Item 2 - The landlord has claimed \$85.00 to have a replacement fob and key issued due to the tenant failing to leave the fob and key in the rental unit. The landlord referred to a photo of the receipt from the Strata for \$85.00 for a “FOB and Key” dated March 27, 2021 and included the address of the rental unit. The tenant admitted that they could have done a better job at handing the fob and key to the landlord and claims they were left in the rental unit. The landlord and their spouse testified that a fob and key were not located in the rental unit, which prompted them to pay for replacements and claim that cost from the tenant.

Section 37(2)(b) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that leaving the fob and key(s) in a place that the landlord could not locate the fob and key results in the tenant breaching section 37(2)(b) of the Act and as a result, I find the tenant is responsible for the full cost of **\$85.00** for the fob and key, which I grant to the landlord. I find the landlord has met the burden of proof.

Regarding item 3, the landlord has claimed \$920.00 for water damaged baseboards. The landlord's spouse testified that the rental unit was about 10 years old, and the landlord referred to the purchase agreement inspection report that lists the bathroom as having no damage, which according to the landlord was one month before the tenancy began in 2019. The landlord referred to a quote which they stated was not in writing but was provided via the telephone by a contractor, which sets out 8 hours at \$65.00 per hour and materials of \$400.00. The landlord confirmed the work has not been completed and that the rental unit has been re-rented for more rent, which is \$1,750.00 per month.

The tenant denies causing the water damage and states that her neighbour had the exact same issue and is a building flaw and was not from water spilling out of the bathtub. The tenant testified that the baseboards were really cheap and started to bubble and warp, which was embarrassing considering the rent they were paying per month. The tenant stated that they 100% deny spilling water out of the tub and that the cause was a building issue not a water from the tub or sink issue.

Given the conflicting evidence before me, I find the landlord by failing to have an incoming CIR and no before photos for my consideration, that the landlord has failed to prove all four parts of the test for damage or loss. I afford very little weight to the purchase inspection report as there are no before photos accompanying that document. I also find that the landlord has not incurred a loss as the baseboards have not been repaired and the rental unit was rent for more rent and not less rent. Accordingly, I dismiss this portion of the landlord's application due to insufficient evidence.

Regarding item 4, and pursuant to section 63 of the Act, the parties reached a mutually settled agreement regarding the tenant paying the landlord \$50.97 to replace a damaged door blind. Accordingly, I order the parties to comply with this mutual agreement and I grant the landlord **\$50.97** as claimed for this portion of their claim.

Regarding item 5, the landlord has claimed \$2,651.37 in rent arrears owing from the repayment plan related to the pandemic and supplied the RTB Repayment Plan Form #RTB-14 (Repayment Plan) which sets out that for April, May, and June 2020 rent, that the tenant continues to owe a total of \$2,651.37 in rent arrears. I find the tenant's response was illogical as the tenant wanted to discuss the landlord's mortgage, which I find is not relevant to the tenant's obligation under section 26 of the Act to pay rent. Therefore, having considered the Repayment Plan, which I find was filled out correctly, I award the landlord **\$2,651.37** in rent arrears as I find the tenant breached section 26 of the Act by failing to provide evidence that the rent arrears had been paid. The landlord has met the burden of proof for this portion of their claim.

Regarding item 6, the landlord has claimed \$1,650.00 for unpaid March 2021 rent. The tenant admitted that rent was not paid and in fact, the landlord issued the 10 Day Notice as a result, which ended the tenancy. The tenant states they vacated on either March 7 or 8, 2021 after receiving the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was March 19, 2021. As the tenant occupied the rental unit at least March 7, 2021, I find the tenant breached section 26 of the Act by not paying March 2021 rent of \$1,650.00 on March 1, 2021. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$1,650.00** for this portion of their claim.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$4,537.34**, comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. House cleaning	dismissed
2. Replacement fob and key	\$85.00
3. Water damaged baseboards	dismissed
4. Replacement door blind	\$50.97 (mutual agreement)
5. Pandemic rent relief repayment plan	\$2,651.37
6. March 2021 unpaid rent	\$1,650.00
7. Filing fee	\$100.00
TOTAL	\$4,537.34

Pursuant to section 67 of the Act, I grant the landlord a monetary order for the amount owing by the tenant to the landlord in the amount of **\$4,537.34**.

I caution the tenant not to breach sections 26 and 37(2)(b) of the Act in the future.

Conclusion

The landlord's claim is mostly successful. The landlord has established a total monetary claim of \$4,537.34. The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$4,537.34 owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is reminded that they can be held liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

Both parties have been cautioned as noted above.

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: September 1, 2021

Residential Tenancy Branch