



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 14, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

D.Z. appeared at the hearing for the Landlord. The Tenant appeared at the hearing late. The Tenant did not appear for Tenant W.J. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

D.Z. confirmed the correct spelling of the Tenants’ names which is included in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Tenant confirmed receipt of the hearing package and Landlord’s evidence.

In relation to Tenant W.J., D.Z. advised that they were served by email. The Landlord did not submit email communications with Tenant W.J. showing this was an appropriate method of service. D.Z. testified that the Tenant told D.Z. at a previous hearing that Tenant W.J. could be served by email.

I did not find service on Tenant W.J. by email sufficient because the Tenant could not authorize service by email on behalf of Tenant W.J. without Tenant W.J.'s permission to do so. Further, there was insufficient evidence before me showing email was an appropriate method of service in the circumstances. Given this, I did not allow the Landlord to proceed against Tenant W.J. and have removed Tenant W.J. from all orders issued.

D.Z. and the Tenant were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Lock smith	\$139.09
2	Lawyer fee	\$336.00
3	FOB replacement	\$100.00
4	Unpaid rent (April – September)	\$11,100.00
5	Arbitration fees for service, tenant placement fee and monitoring move-out	\$2,893.00
6	Key fob fees	\$150.00
7	Filing fee	\$100.00
	TOTAL	\$14,818.09

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started December 17, 2018. Rent was \$27,100.00 paid annually. The parties agreed the Tenants paid rent annually for the first two years of the tenancy and then

monthly from 2020 on. The Tenants paid a \$1,050.00 security deposit. The tenancy agreement has an addendum.

The parties agreed on the following. The tenancy ended September 15, 2020. The Tenants did not provide the Landlord a forwarding address in writing.

#1 Lock smith \$139.09

The Landlord sought lock smith fees for a service call to enter the rental unit and to cut two keys. D.Z. testified that agents for the Landlord posted proper notice to enter the rental unit but the Tenants would not allow the agents access to the rental unit, so they had to hire a lock smith to let them in. D.Z. testified that agents for the Landlord did not keep an extra set of keys for the rental unit at the start of the tenancy.

The Tenant testified that they had left the country at the time the Landlord tried to enter the rental unit and they had given their key to Tenant W.J.

#2 Lawyer fee \$336.00

I did not hear the parties on this claim because lawyer fees are not recoverable in these proceedings.

#3 FOB replacement \$100.00

#6 Key fob fees \$150.00

The Landlord sought fees for replacing fobs and keys during and at the end of the tenancy. D.Z. testified that Tenant W.J. would not respond to agents for the Landlord when they attempted to get fobs and keys from the Tenants. The Landlord submitted receipts for the amounts sought.

The Tenant advised that it is Tenant W.J. who would know about this issue.

#4 Unpaid rent (April – September) \$11,100.00

The Landlord sought to recover unpaid rent. D.Z. testified that the Tenants paid \$1,000.00 in rent for April 2020 and did not pay any further rent. The Landlord submitted an email about unpaid rent and a Repayment Plan.

The Tenant testified that the Tenants had an agreement that the Tenant would pay rent for 2019 and Tenant W.J. would pay rent for 2020. The Tenant testified that they do not know what happened with Tenant W.J. but that Tenant W.J. did not pay rent when they were supposed to.

**#5 Arbitration fees for service, tenant placement fee and monitoring move-out
\$2,893.00**

I did not hear the parties on “arbitration fees for service” because these types of costs are not recoverable in these proceedings.

The Landlord sought fees for tenant placement and monitoring move-out; however, D.Z. acknowledged there was no breach by the Tenants in this regard.

Analysis

Security deposit

Sections 38(1) and 39 of the *Act* state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(emphasis added)

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address** in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished

(emphasis added)

The parties agreed the Tenants did not provide the Landlord a forwarding address in writing; therefore, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit when the Application was filed.

Compensation

RTB Policy Guideline 13 states:

Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement...

Co-tenants are jointly and severally responsible for payment of rent when it is due...

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves.

The Tenants were co-tenants under the same tenancy agreement. I understand the Tenant to say they moved out of the rental unit prior to Tenant W.J. However, there is no evidence before me showing the tenancy ended prior to September 15, 2020, and the parties agreed it ended September 15, 2020. Therefore, the Tenant remained

responsible for fulfilling the terms of the tenancy agreement until September 15, 2020. As well, the Landlord can collect monies owing from either or both Tenants, regardless of which is personally responsible for the monies owing.

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Lock smith \$139.09

I decline to award the Landlord this amount. Although the Tenants could not block access to the rental unit when provided proper notice, the Tenants were not obligated to be present and let agents for the Landlord into the rental unit. Agents for the Landlord

should have had an extra set of keys for the rental unit so they could enter when authorized to do so without relying on the Tenants to let them in. Here, I understood the issue to be that the Tenants were not present to let agents for the Landlord into the rental unit, not that the Tenants blocked entry into the rental unit. In the circumstances, the Tenants did not breach the *Act* or *Residential Tenancy Regulation*. D.Z. did not point to any breach of the tenancy agreement. In the absence of a breach by the Tenants, the Landlord is not entitled to compensation for this issue.

#2 Lawyer fee \$336.00

I decline to award the Landlord this amount because lawyer fees are not recoverable in these proceedings.

#3 FOB replacement \$100.00

#6 Key fob fees \$150.00

Section 37(2)(b) of the *Act* states:

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

(c) 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.

Term 16 in the tenancy agreement addendum states:

16. KEYS. Landlord will at its cost provide the Tenant with two (2) sets of keys to all locks and entries of the Premises. The 2 sets of keys are to be returned to the Landlord or Landlord's representative in good working condition at the end of the lease term. The tenant will be responsible for replacing lost or damaged keys or key Fobs for the building.

I accept that the Tenants breached section 37(2)(b) of the *Act* and term 16 of the tenancy agreement addendum by requiring the Landlord to replace fobs and keys during and at the end of the tenancy because D.Z.'s testimony about this is undisputed. I accept based on the receipts in evidence that it cost \$250.00 to replace the fobs and keys. I find the amount sought reasonable and award the Landlord \$250.00.

#4 Unpaid rent (April – September) \$11,100.00

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

I accept the position of the Landlord that the Tenants failed to pay \$11,100.00 in rent from April to September of 2020 because the Tenants did not dispute this. There is no evidence before me that the Tenants had authority under the *Act* to withhold rent. The Landlord is entitled to recover the unpaid rent and is awarded \$11,100.00.

I acknowledge that the Tenant testified that Tenant W.J. was supposed to pay rent for 2020; however, as stated, the Tenants were co-tenants and therefore both are jointly and severally liable for paying rent.

#5 Arbitration fees for service, tenant placement fee and monitoring move-out \$2,893.00

I decline to award the Landlord “arbitration fees for service” because these types of costs are not recoverable in these proceedings.

I decline to award the Landlord fees for tenant placement and monitoring move-out because D.Z. could not point to a breach by the Tenants that caused the Landlord to suffer the loss claimed. In the absence of a breach by the Tenants, the Landlord is not entitled to compensation for the issues listed.

#7 Filing fee \$100.00

Given the Landlord has been partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Lock smith	-
2	Lawyer fee	-
3	FOB replacement	\$100.00
4	Unpaid rent (April – September)	\$11,100.00
5	Arbitration fees for service, tenant placement fee and monitoring move-out	-
6	Key fob fees	\$150.00
7	Filing fee	\$100.00
	TOTAL	\$11,450.00

The Landlord can keep the \$1,050.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$10,400.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$11,450.00 and can keep the \$1,050.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$10,400.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and 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 *Act*.

Dated: June 01, 2022

Residential Tenancy Branch