



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 seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order pursuant to s. 67 for unpaid rent;
- A monetary order pursuant to s. 67 for damages to the rental unit caused by the Tenant;
- A monetary order pursuant to s. 67 for other monetary loss; and
- An order pursuant to s. 72 for return of his filing fee.

The Landlord claims against the security deposit for these amounts.

V.M. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Preliminary Issue – Service of the Landlord’s Application Materials

The Landlord confirmed that he never received the Tenant’s forwarding address at the end of the tenancy. The Landlord advised that he served the Tenant with the Notice of Dispute Resolution and his evidence by way of registered mail sent on November 18, 2021. The Landlord confirmed the destination address for the registered mail sent on November 18, 2021.

When I enquired where the Landlord mailed his application materials as no forwarding address was given to him, he indicated that he obtained the Tenant’s forwarding address from the Residential Tenancy Branch due to prior applications the Tenant had made with respect to the tenancy. The Landlord further advised that he received a letter from the Tenant on June 23, 2021 which he says has the Tenants current mailing address.

The Landlord referred me to a file in which the Tenants application was dismissed on November 3, 2020. I further note that the Landlord’s application states that it was filed in response to another file before the Residential Tenancy Branch. That other file was, again, a claim brought by the Tenant and it came on for hearing on November 2, 2021 and both parties attended. I have reviewed both decisions from the Tenant’s prior applications.

The November 2, 2021 decision specifically states the following:

I find that the tenant’s forwarding address is deemed to have been received today, November 2, 2021. **The landlord will have 15 days from today’s date to return the security deposit to the tenant in full or to make an application claiming against it. If the landlord fails to do either, the tenant will be at liberty to apply for double** the amount, and I dismiss this portion of the tenant’s application with leave to reapply.

(Emphasis in the original)

Though not specifically mentioned by the Landlord, I accept that his application made reference to the file for the November 2, 2021 decision and that it would be inappropriate not to consider it given the directions given by the arbitrator on that occasion.

Given the finding in the decision of November 2, 2021, the fact that both parties attended that hearing, and the fact that the Landlord confirmed the address for service to the Tenant, I find that the Landlord served his application materials on the Tenant in accordance with s. 89 of the *Act* by way of registered mail sent on November 18, 2021. Service for the present application occurred within a short timeframe of the November 2, 2021 decision. Therefore, I deem that the Tenant received the Landlord's application materials on November 23, 2021 pursuant to s. 90 of the *Act*.

Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to compensation for damages to the rental unit?
- 3) Is the Landlord entitled to other monetary compensation?
- 4) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on July 28, 2018.
- The Landlord obtained vacant possession of the rental unit on January 9, 2020.
- Rent was payable in the amount of \$2,500.00 on the 31st day of each month.
- The Landlord holds a security deposit of \$1,250.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord confirming these details.

The Landlord's application claims \$2,500.00 for unpaid rent and \$1,503.75 for damages to the rental unit. The Landlord also seeks \$100.00 for his filing fee as part of his third claim under s. 67, which appears to replicate his claim under s. 72.

The Landlord says that the Tenant did not pay rent for January 2020. A 10-Day Notice to End Tenancy signed January 2, 2020 was put into evidence by the Landlord and he indicates that the Tenant vacated the rental unit without paying the amount owed for rent under the tenancy agreement.

The Landlord also includes a monetary order worksheet in which the following amounts are listed:

Item	Amount
Lock/Keys	\$200.00
Cleaning/Garbage Removal	\$650.00
Pest Control	\$193.75
Sink/Faucet Repair	\$460.00
Large Furniture Removal	\$300.00
TOTAL	\$1,803.75

The Landlord advised that the Tenant had changed the locks for the rental unit and left it without leaving keys behind. He says that the locks had to be replaced and says that it cost him \$200.00 to purchase new locks. There is no receipt for this amount as the Landlord says he obtained this amount from his credit card statement.

The Landlord provides photographs of the rental unit and the Landlord described the rental unit at the end of the tenancy as being a mess. The Landlord indicates that he retained a cleaner and that it cost \$650.00. A copy of the receipt is included showing this amount and it is dated for January 12, 2020.

The Landlord further testified that there was a blockage in the kitchen sink, which required a plumber and cost \$460.00. A copy of a receipt dated April 15, 2019 was put into evidence by the Landlord with respect to this amount.

I enquired about the claim with respect to the pest control and the Landlord was unable to explain any of the specifics with respect to this claim. During the hearing, the Landlord indicated that he was not seeking this amount.

The Landlord made no submissions with respect to the \$300.00 large furniture removal claim. The Landlord further advised that he is seeking \$150.00 for registered mail and photocopying costs due to the disputes before the Residential Tenancy Branch. However, no receipts were provided for this amount.

The Landlord provides a copy of the move-in inspection report and advised that no move-out inspection report was completed. The Landlord states that none was possible as the Tenant left abruptly and “ran away”.

As mentioned above, the Tenant was deemed to have given the Landlord her forwarding address on November 2, 2021. The Landlord confirmed he still retains the security deposit in full.

Analysis

The Landlord seeks monetary compensation by claiming against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Section 39 of the *Act* stipulates that, despite any other provision of the *Act*, if a tenant does not give a landlord their forwarding address within one year of the end of the tenancy the landlord may keep the security deposit and the tenant's right to its return is extinguished.

Based on the information in this matter, the Tenant never provided their forwarding address as required by s. 38(1) and failed to do so within 1-year of the end of the tenancy as required under s. 39. The Landlord advises and I accept that the Tenant vacated the rental unit on January 9, 2020. I further note this corresponds with evidence provided by the parties in the November 2, 2021 decision. Thus, the Tenant had until January 9, 2021 to provide her forwarding address.

I take issue with the November 2, 2021 decision, in particular the “deemed” provision of the forwarding address, as the decision does not consider the application of s. 39 of the *Act* at all. Further, the decision appears to carve an exception to the Tenant’s claim for the return of the security deposit, which directly contradicts s. 39. I note that decisions of the Residential Tenancy Branch do not have the power of precedent. To the extent that the November 2, 2021 decision carved out an exception to the Tenant’s claim for the return of the security deposit, I find that it was wrongly decided as it did not consider the application of s. 39 of the *Act*.

I find that the Tenant failed to provide her forwarding address within 1-year of the end of the tenancy as required under s. 39 of the *Act*. Her claim to the return of the security deposit is, therefore, extinguished.

The issue of the lack of move-out inspection report is not relevant as s. 39 is clear that “despite any other provision of this Act” the Tenant’s right to the return of the security deposit is extinguished. I would note, however, that I would further find that the Tenant’s right to the return of the security deposit would have been extinguished first under s. 36 of the *Act* as the Tenant left the rental unit without communicating to the Landlord. As stated by the Landlord, and I accept, the Tenant “ran away”, thus making the mutual move-out condition inspection impossible.

Though not argued before me, I note that s. 60 of the *Act* requires claims brought forward under the *Act* to be made within 2 years of the end of the tenancy. Having regard to Rule 2.6 of the Rules of Procedure and the information on file for this matter, I find that the Landlord filed his application on November 13, 2021. As the tenancy ended on January 9, 2020, the Landlord filed his application within limitation period imposed by s. 60.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Based on the Landlord's undisputed evidence, I find that he has established a claim to unpaid rent for January 2020 in the amount of \$2,500.00. I accept that the Tenant failed to pay rent when due on the 31st of December in contravention to her obligation under the tenancy agreement. This breach caused a financial loss to the Landlord which could not have been mitigated as the Tenant continued to reside within the rental unit until January 9, 2020. The Landlord has made out his claim for this amount.

Dealing next with the damages to the rental unit, ss. 32(2) and 32(3) of the *Act* imposes an obligation on tenants during the tenancy to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant. At the end of the tenancy, s. 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

Based on the Landlord's undisputed evidence, I find that the Tenant breached her obligation under s. 32 of the *Act* with respect to the plumbing repair that was undertaken on April 15, 2019 as the blockage was caused by the Tenant. I accept that the Landlord suffered the financial loss as shown in the receipt that could not have been mitigated. The Landlord has made out his claim for \$460.00 for the plumbing repair.

I further find, again on the Landlord's undisputed evidence, that the rental unit was left in an unclean state in direct breach of the Tenant's obligations under s. 37 of the *Act*. This corresponds with photos of the rental unit provided by the Landlord. The Landlord submits a cleaning receipt for \$650.00 paid after the end of the tenancy, which I accept was his financial loss that could not have been mitigated under the circumstances. This portion of the claim is made out.

Finally, the Landlord advances \$150.00 cost for registered mail and photocopying expenses and \$200.00 for replacing the locks. Without considering the other aspects of

the four-part test, I find that that Landlord has failed to quantify these portions of the claim as there are no receipts to verify that these amounts had been paid. By outward appearances, they appear to be estimates given that they are round figures. It is the Landlord's claim and he must prove it, which includes providing proof of the loss by quantifying it. I find that the Landlord has failed to do so with respect to these portions. These portions are dismissed without leave to reapply.

The Landlord's final claim under s. 67 was for the \$100.00 filing fee, which replicates the claim under s. 72. This portion is dismissed without leave as it was improperly pled and replicates the claim under s. 72.

In total, I find that the Landlord has established a monetary claim under s. 67 of the *Act* in the total amount of \$3,610.00 (\$2500.00 + \$460.00 + \$650.00). Despite the Tenant's extinguished right to the security deposit, Policy Guideline #17 is clear that it is to be taken into account in these circumstances. I direct that the security deposit of \$1,250.00 be offset from the total amount owed by the Tenant. Thus, the net amount owed is \$2,360.00.

As the Landlord was largely successful, I find he is entitled to the return of his filing fee. I order pursuant to s. 72 of the *Act* that the Tenant pay his \$100.00 filing fee.

Conclusion

I find that the Landlord has established a total monetary claim taking the following into account:

Item	Amount
Monetary Claim proven by the Landlord	\$3,610.00
Filing fee to be paid by the Tenant pursuant to s. 72(1)	\$100.00
Less the security deposit to be retained by the Landlord	-\$1,250.00
TOTAL	\$2,460.00

Pursuant to ss. 67 and 72, I order that the Tenant pay **\$2,460.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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 *Residential Tenancy Act*.

Dated: June 14, 2022

Residential Tenancy Branch