



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a monetary order pursuant to s. 67 for compensation or other money owed;
- a monetary order pursuant to s. 67 for compensation due to the damages to the rental unit cause by the tenants; and
- Return of their filing fee pursuant to s. 72.

The Landlord claims against the security deposit and pet damage deposit.

K.K. appeared as the Landlord. K.K. appeared as support and assistant to the Landlord.
R.B. appeared as the Tenant.

The parties 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 parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Notice of Dispute Resolution was served on the Tenants. The Tenant acknowledges receiving the Notice of Dispute Resolution by way of registered mail. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*.

The Tenant confirmed that no response evidence was served on the Landlord.

Preliminary Issue – Service of the Landlord's Evidence

The Landlord provided 48 pages of evidence to the Residential Tenancy Branch. The Landlord confirmed that their evidence had been served on the Tenant. The Tenant denied receiving evidence in the registered mail package and confirmed receipt of a utility bill and cleaning receipt, though these were by way of text message. The Landlord later clarified that no photographs of the rental unit were served on the Tenant but emphasized that two more documents, an outdoor cleanup invoice and a paint estimate, were also served on the Landlord.

Rule 3.5 of the Rules of Procedure requires applicants to demonstrate service of their application materials at the hearing. In this instance, I find that the Landlord has failed to demonstrate service of its evidence. The Landlord's testimony changed during the hearing, from having served all the evidence they provided the Residential Tenancy Branch, to only then serving a portion, being four documents. Given the inconsistency in their evidence with respect to service and given that they bear the burden of proving service of their evidence, I find that the Landlord has failed to demonstrate service of the four documents.

I am left with the Tenant's acknowledged receipt of a cleaning receipt and a utility statement, though she indicates she received these documents via text message. Text message is not an approved form of service under the *Act*. Despite this, I find that pursuant to s. 71(2) of the *Act* that these two pieces of evidence were sufficiently served on the Tenant based on their acknowledged receipt.

All the other evidence the Landlord provided to the Residential Tenancy Branch is excluded and shall not be considered by me as to do so would be procedurally unfair to the Tenant, who was not served.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for compensation?
- 2) Is the Landlord entitled to a monetary order due to damages to the rental unit?
- 3) Is the Landlord entitled to the return of its 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 parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 15, 2018.
- The Landlord obtained vacant possession of the rental unit on December 31, 2021.
- Rent of \$2,870.00 was payable on the first day of each month.
- The Tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$100.00 to the Landlord.

The Landlord advised that the Tenant was responsible for paying the utilities for the rental unit. The Landlord further advised that the Tenant had failed to pay the final utility bill of \$2,229.07 and that the Landlord has paid this bill. A copy of the utility bill is in evidence. The Tenant acknowledged her responsibility for paying the utility bill.

The Landlord also claimed the cost for cleaning the rental unit and getting the carpets cleaned on the basis that the Tenant had not sufficiently cleaned the rental unit after vacating the space. The Landlord's evidence includes an invoice with a cleaning company for cleaning the rental unit and carpet cleaning at a cost of \$800.00.

The Tenant disputed the cleaning fee, indicating that the rental unit had been cleaned prior to them moving out and that they had had the carpets professionally cleaned. The Tenant indicates that she had a receipt for the carpet cleaners. No receipt was put into evidence by the Tenant prior to the hearing.

The Landlord further claimed cost for wall repair and painting in the amount of \$1,260.00. The Landlord testified to drawings on the walls that appeared to be from children and holes all over the place. The Tenant confirmed that pictures were hung on the wall but denied the holes were excessive or large.

The Landlord also seeks the cost of removing an outdoor deck that the Tenant installed. The Landlord indicates that it cost \$150.00 to remove the deck. The Tenant acknowledged that the deck ought to have been removed. However, the Tenant argued that it was not possible to do so given that the deck was covered in snow.

The Landlord testified to a move-in inspection being conducted on August 14, 2018 and a move-out inspection being conducted on January 6, 2021. The Landlord indicates that the Tenant was not present at the move-out inspection as they had Covid-19 at the time. The Landlord testified that their agent forwarded a copy of the move-out inspection to the Tenant. The Landlord indicates that they never received a forwarding address from the Tenant.

The Tenant confirmed having Covid-19 and that she did not participate in the move-out inspection. The further confirmed never providing a forwarding address to the Landlord and denied receiving a copy of the move-out inspection report.

The Landlord confirmed that they still held both deposits in full.

Analysis

The Landlord seeks compensation for money owed and damages to the rental unit.

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.

There is no dispute between the parties that the tenants were responsible for paying utilities and that they were not paid. I find that the tenants breached their obligation under the tenancy agreement to pay the utilities. As the Landlord confirmed paying the amount owed, I find that the tenants' breach caused a loss to the Landlord which is quantified in the amount of \$2,229.07 as per the utility statement in evidence. I find that the Landlord is entitled to a monetary award in this amount.

Section 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. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

The Landlord says it cost \$800.00 to clean the rental unit. The Tenant denies that the rental unit was left in an unclean state. The Landlord’s evidence includes an invoice for this amount. However, the Landlord failed to serve evidence confirming the state of the rental unit upon move-out, such as the inspection report or photographs of the state of the rental unit. I am left with contradictory testimony with the Landlord saying the rental unit was dirty and the Tenant saying it was clean. It is the Landlord’s claim. They bear the burden of proving it. Based on the evidence that was admitted into record, I am unable to make a finding that the tenants breached their obligation under s. 37(2) of the *Act* with respect to the Landlord’s claim for cleaning the rental unit.

Similarly, I am unable to make a finding that the tenants breached their obligation to clean and repair the rental unit with respect to the painting and wall damage. The Landlord provided no evidence to the extent or nature of the holes in the walls as would be contemplated under Policy Guideline #1. Given this, I am unable to find that the Tenant breached their obligation under s. 37(2) with respect to the Landlord’s claim for the cost to repair the wall damage.

Finally, the Tenant admits that they ought to have removed the outdoor deck. I find that the Tenant’s admission that this ought to have been removed is an admission that they did not comply with their obligation under s. 37(2) of the *Act*. The Landlord testified that it cost \$150.00 to remove the deck. I find that the Landlord has established its claim based on their oral testimony. I find that the Landlord has established its claim for this amount.

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. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within

the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

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.

Presently, the Tenant admits to never providing their forwarding address. Accordingly, the 15-day timeline set under s. 38(1) was not triggered. The doubling provision of s. 38(6) does not apply.

The Landlord was partially successful in its application. I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1), I order that the tenants pay the Landlord's \$100.00 filing fee.

I direct that the Landlord withhold the total deposits of \$1,500.00 in partial satisfaction of the amount owed by the tenants.

I make a total monetary award taking the following into account:

Item	Amount
Utility Bill	\$2,229.07
Deck Removal	\$150.00
Landlord's Filing Fee	\$100.00
Less deposits to be retained	-\$1,500.00
Total	\$979.07

Conclusion

The Landlord has established a total monetary claim of \$2,479.07. The Landlord is entitled to its filing fee. The Landlord may retain the deposits of \$1,500.00 in partial satisfaction of the total amount owed by the Tenants.

Pursuant to s. 38, 67, and 72, I order that the Tenants pay **\$979.07** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the tenants. If the tenants do not comply with the monetary order, it may be filed 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: August 26, 2022

Residential Tenancy Branch