



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S, FFL

Introduction

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

- an order pursuant to s. 67 for monetary compensation for loss or other money owed;
- an order pursuant to s. 67 for unpaid rent;
- an order pursuant to s. 67 for monetary compensation for damage the rental unit caused by the Tenant; and
- return of his filing fee pursuant to s. 72.

The Landlord advances his monetary claims by claiming against the security deposit.

D.S. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend 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.

The Landlord testified that he obtained the Tenant's forwarding address from the Tenant February 7, 2022. He says he served the Notice of Dispute Resolution on the Tenant via registered mail sent to the forwarding address. The Landlord provided tracking information showing it has received and signed for by the Tenant on February 18, 2022. I find that the Landlord served the Notice of Dispute Resolution on the Tenant in accordance with s. 89 of the *Act* and was received on February 18, 2022 as confirmed by the tracking information provided by the Landlord.

The Landlord further testified that he served his supporting evidence on the Tenant via registered mail sent to the same address on August 20, 2022. The Landlord indicated it was returned to him.

Policy Guideline #12 provides guidance with respect to the service provisions of the *Act*. Section 90 of the *Act* permits findings of service based on deemed receipt. Policy Guideline #12 clarifies that s. 90 forms evidentiary presumptions of receipt that can be rebutted when fairness requires. Policy Guideline #12 further states the following:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I accept the Landlord's undisputed testimony that his documentary evidence was served via registered mail sent to the Tenant's forwarding address on August 20, 2022. I find that this was done in accordance with s. 89 of the *Act*. Even though the package was returned to the Landlord, Policy Guideline #12 is clear that deemed service provisions under s. 90 still apply and that refusal to pick up or sign for documents served via registered mail is no excuse. Further, as the Tenant did not attend the hearing, I was provided with no explanation for why the evidence was not retrieved or why the deemed service provisions ought not apply. Accordingly, I deem that Tenant received the Landlord's evidence on August 25, 2022 pursuant to s. 90 of the *Act*.

Issues to be Decided

- 1) Is the Landlord entitled to compensation for loss or other money owed?
- 2) Is the Landlord entitled to compensation for unpaid rent?
- 3) Is the Landlord entitled to compensation for damage to the rental unit?

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 January 1, 2022.
- The tenancy was for a fixed term ending on February 28, 2022.
- The Tenant vacated the rental unit on January 24, 2022.
- Rent of \$1,075.00 was payable on the first day of each month.
- The Tenant paid a security deposit of \$540.00 to the Landlord, none of which has been returned after the end of the tenancy.

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

The Landlord testified that he did not receive formal notice from the Tenant that they would be vacating the rental unit prior to the end of the term. The Landlord indicates that he is seeking rent for the last month of the term, being for February 2022.

The Landlord further claims the cost for cleaning the rental unit and for garbage removal. The Landlord testified that the rental unit was left in an unclean state and has provided photographs of the rental unit at the end of the tenancy. The Landlord advised that the amount listed in the Notice of Dispute Resolution was an estimate and that the actual cost of cleaning the rental unit was \$507.00 and removal of garbage was \$140.00, which is less than the estimated amount. The Landlord provides receipts for these amounts.

The Landlord further testified that his claim for other money owed related to the cost for preparing for this application, including the cost of sending two registered mail packages at a cost of \$16.00 for each package and \$25.00 for photocopying costs. The Landlord did not provide receipts with respect to these amounts other than the registered mail of August 20, 2022, which lists the cost at \$16.20.

I am told by the Landlord that the Tenant had stolen items from the rental unit. However, the Landlord indicates that he has not claimed these amounts as part of this application.

The Landlord provided a copy of the condition inspection report and confirmed that the move-in inspection was conducted on January 1, 2022 and the move-out inspection was conducted on February 15, 2022. The Landlord testified that the move-out inspection was conducted without the Tenant's participation after he provided opportunities for the Tenant to participate. The Landlord's evidence includes a notice of final opportunity to schedule a condition inspection for January 31, 2022.

As mentioned above, the Landlord testified that he obtained the Tenant's forwarding address on February 7, 2022, which he says he obtained from the Tenant by way of email from her.

Analysis

The Landlord seeks monetary compensation at the end of the tenancy 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. Given the circumstances, I find that the Landlord complied with his obligations under ss. 23 and 35 concerning the condition inspection report such that extinguishment does not apply.

In this instance, I accept the Landlord's undisputed evidence that he received the Tenant's forwarding address on February 7, 2022. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed his application on February 10, 2022. I find that the Landlord filed his application within the 15-day window imposed by s. 38(1) of the *Act*.

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.

The Landlord seeks rent for February 2022. Tenant's may end a tenancy by giving notice to the landlord pursuant to s. 45 of the *Act*. In the case of fixed term tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice, cannot be earlier than the date specified in the tenancy agreement as the end of the tenancy, and is on a day before rent is due under the tenancy agreement. A tenant's notice must comply with the formal requirements set out under s. 52 of the *Act*.

I accept the Landlord's undisputed evidence that the Tenant vacated the rental unit on January 24, 2022. Under the present circumstances, the tenancy agreement clearly shows that the tenancy was for a fixed-term tenancy ending on February 28, 2022. Even if the Tenant gave proper notice under s. 52 of the *Act*, the Tenant was not permitted to end the tenancy prior to the end of the term. Accordingly, I find that the Tenant breached s. 45 of the *Act* when ending the tenancy. This breach gives rise to the Landlord's claim for February 2022 rent. I find that the Landlord could not have reasonably mitigated his damages given that the Tenant vacated on January 24, 2022. Accordingly, I find that the Landlord is entitled to rent for February 2022 totalling \$1,075.00.

The Landlord also seeks compensation for damage to the rental unit. 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.

I accept the Landlord's undisputed evidence, as supported by the condition inspection report and the photographs, that the rental unit was left in an uncleanly state by the Tenant. I find that the Tenant breached their obligation under s. 37 of the *Act* at the end of the tenancy, which gives rise to the Landlord's claim for cleaning and garbage removal. I find that the Landlord could not have mitigated his damages under the circumstances and accept that he paid \$507.00 to clean the rental unit and \$140.00 to remove the garbage, as supported by receipts put into evidence. Accordingly, I find that

the Landlord is entitled to \$647.00 (\$507.00 + \$140.00) for compensation for damage to the rental unit.

Dealing last with the Landlord's claim for compensation related to preparing for this application, I accept that the Landlord did incur costs in the form of photocopying and registered mail. However, I decline to grant these amounts on the basis that costs at Residential Tenancy Branch hearings are limited to the return of the filing fee. It is inappropriate, in my view, to seek compensation for expenses associated with preparing and participating in a hearing. Similar logic to the Landlord's current claim could conceivably be applied to a someone's lawyer cost, which manifestly runs contrary to the cost principle associated with the Residential Tenancy Branch process.

Photocopying and registered mail costs are part of expenses to be incurred by all parties with respect to proceedings before the Residential Tenancy Branch and are not recoverable. This portion of the Landlord's claim is dismissed without leave to reapply.

I find that the Landlord has established a total monetary claim totalling \$1,722.00 (\$1,075.00 + \$647.00). Pursuant to s. 72(2) of the *Act*, I direct that the security deposit of \$540.00 be retained in full by the Landlord in partial satisfaction of the total amount owed by the Tenant.

Conclusion

The Landlord is entitled to \$1,075.00 due to the Tenant's early end to the tenancy.

The Landlord is entitled to \$647.00 for compensation for damages caused by the Tenant at the end of the tenancy.

The Landlord's claim for other monetary compensation associated with registered mail and photocopying expense is dismissed without leave to reapply.

I find that the Landlord was largely successful in his application. Accordingly, I find that he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's filing fee.

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

Item	Amount
Unpaid Rent	\$1,075.00
Damage to the rental unit	\$647.00
Landlord's filing fee	\$100.00
Less security deposit to be retained by the Landlord	-\$540.00
Total	\$1,282.00

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$1,282.00** 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: September 28, 2022

Residential Tenancy Branch