



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S MNDCL-S 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) for a monetary order of \$4,362 for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for damage to the unit, site or property and to recover the cost of the filing fee.

An agent for the landlord, BM (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 24, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on the tenant by registered mail on March 25, 2022. A registered mail tracking number was provided by the agent and has been included on the cover page of this decision as submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the Canada Post online registered mail tracking website the registered mail package was refused by the tenant on April 5, 2022. The Act does not permit the refusal of service and as such, I find the tenant was duly served as of April 5, 2022, the date in which the tenant refused service of the Hearing Package.

As the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rules 7.1 and 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matters

The agent confirmed the email addresses of the landlord and tenant during the hearing. The agent was advised that the Decision would be emailed to both parties. Any resulting monetary order, if applicable, will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- 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. A fixed-term tenancy began on January 1, 2021, and was scheduled to convert to a month-to-month tenancy after December 31, 2021. The tenant breached the fixed-term tenancy by failing to pay rent and vacated the rental unit on November 9, 2021.

The agent stated that the tenant paid a security deposit of \$775 and a pet damage deposit of \$775 at the start of the tenancy, which the landlord continues to hold. For the remainder of this Decision, I will refer to both deposits as "combined deposits". The combined deposits total \$1,550.

The agent read from an email during the hearing which they affirmed was from the tenant to the landlord dated November 12, 2021. The agent stated that the tenant asked the landlord to see their attached signature and that the tenant is authorizing the landlord to retain their combined deposits of \$1,550 towards any balance owing. As a result, I find that I do not need to consider the 15-day timeline to file their application claiming towards the combined deposits, as the landlord already had signed authorization from the tenant surrendering their combined deposits. As a result, I will offset any amount owing with the combined deposits of \$1,550.

The landlord's monetary claim of \$4,362 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unit cleaning	\$231
2. Furniture and garbage removal	\$756
3. NSF rent payment fees (\$25 x 2)	\$50
4. 2 months of rent (October 2021 and November 2021)	\$3,100
5. Lock replacement and keys	\$125
6. Filing fee	\$100
TOTAL	\$4,362

Regarding item 1, the landlord has claimed \$231 for the cost to clean the rental unit, which the agent stated needed a full cleaning throughout the rental unit. The agent presented the Condition Inspection Report (CIR) which supports that the rental unit was clean at the start of the tenancy and required cleaning throughout the rental unit at the end of the tenancy. The agent testified that 3:00p.m. was the time scheduled for the outgoing CIR; however, the tenant failed to attend and by 4:00p.m. the agent completed the outgoing portion of the CIR on their own as required by the Act. The agent presented an invoice dated November 3, 2021, in the amount of \$220 plus \$11 GST, making the total amount \$231.

Regarding item 2, the landlord has claimed \$756 for the cost to remove what the agent described as broken furniture and garbage from the rental unit left behind by the tenant and which has no value as it is junk. The outgoing CIR supports the need for garbage removal. The amount claimed is supported by the invoice dated November 12, 2021, in the amount of \$756.

Regarding item 3, the landlord has claimed \$50 for Non-Sufficient Funds (NSF) fees. The agent testified that the amount of \$50 is comprised of a \$25 NSF fee for 10/06/2021 and a \$25 NSF fee for 11/3/2021.

Regarding item 4, the landlord has claimed \$3,100 in unpaid rent and loss of rent. The agent stated that \$1,550 remains owing for October 2021 rent and loss of November 2021 rent in the amount of \$1,550. The agent confirmed that the tenant failed to vacate the rental unit by the November 1, 2021, date listed as the effective vacancy date on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice). The agent affirmed that the tenants did not vacate the rental unit until November 9, 2021, and that November 2021 rent was due on November 1, 2021.

Regarding item 5, the landlord has claimed \$125 for lock replacement and for keys to the rental unit. The agent testified that the tenant failed to return a mailbox key and the rental unit access key. As a result, the agent testified that the landlord suffered a loss of \$40 for a new mailbox key, in addition to an \$85 loss from having to replace the entryway lock and make new keys for new tenants.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was found to be served with the Hearing Package as you cannot refuse service under the Act, and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

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.

[emphasis added]

In addition, section 45(2) of the Act applies and states:

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[emphasis added]

Furthermore, section 37(2) 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

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(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.

[emphasis added]

Based on the above, I find the tenant breached sections 26, 45(2), and 37(2) of the Act by failing to pay rent as required for October 2021 and November 2021 as the tenant remained in the rental unit until November 9, 2021. I find the tenant was not entitled to end the tenancy earlier than December 31, 2021, as that was the end of the fixed-term portion of the tenancy agreement as after December 31, 2021, the tenancy would have converted to a month-to-month tenancy. Furthermore, I find the tenant left the rental unit in an unreasonably dirty condition based on the undisputed testimony of the agent, which is a breach of section 37(2) of the Act. As a result, I find the landlord's application is fully successful in the amount of **\$4,362** as indicated in the table above, which also includes an additional **\$100** for the recovery of the cost of the filing fee pursuant to section 72 of the Act, which I find the landlord is owed by the tenant.

Pursuant to section 38 of the Act, as the landlord continues to hold the tenant's combined deposits of \$1,550, I grant the landlord authorization to retain the tenant's full \$1,550.00 in combined deposits, which have accrued no interest, to offset the \$4,362 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenant to the landlord in the amount of **\$2,812**.

I caution the tenant not to breach sections 26, 45(2) and 37(2) of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$4,362 as described above. The landlord has been authorized to retain the tenant's full combined deposits of \$1,550, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$2,812. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above.

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

Should the tenant fail to pay the monetary order, they can be held liable for all costs related to enforcement of the monetary order.

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: November 17, 2022

Residential Tenancy Branch