



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

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

Introduction

The landlord seeks compensation under section 67 of the *Residential Tenancy Act* (the “Act”). They also seek to recover the cost of the filing fee under section 72 of the Act.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on June 20, 2020 and ended on March 31, 2022. Rent was \$950 per month, due on the first of each month. It was a fixed-term tenancy until June 2021, then became month-to-month. There is a \$475 security deposit. A written tenancy agreement and an addendum are in evidence.

Part G of the addendum included the following term:

[. . .] the Tenant agrees to provide the Landlord a deposit in the amount of \$150.00 to cover the purchase of a wireless router and the high speed cable model. The deposit will be reimbursed to the Tenant at the end of the tenancy upon final inspection.

Internet equipment purchased by the Landlord will remain in the rental unit in the Tenant’s possession:

New Wireless Router: Netgear Nighthawk AC2100 Smart WiFi Router (R7200) – valued at \$200.00+

High Speed Modem: Hitron Model CDA3 – valued at \$100.00+

As an aside, it is worth noting that "Internet" is a service listed in the tenancy agreement that was included in the rent.

The landlord's *Monetary Order Worksheet* listed several claims, though claims for carpet cleaning, sanitization, and wall repairs were either missing a dollar amount or not supported by invoices. As such, only the claims for the missing router and modem, and for unpaid rent are considered.

The landlord testified under oath that the tenant gave her notice to end the tenancy in February 2022 and moved out on March 15, 2022. The tenancy itself was a month-to-month tenancy. These facts were not disputed by the tenant. The landlord thus seeks rent that was not paid for the month of March.

According to the tenant, she gave the landlord "30 days notice" on February 15 (or thereabouts) that she would be vacating on March 15. The tenant agreed that the rent was paid on the first day of the month and that the tenancy ran from the first day to the thirtieth day of the month. The tenant testified that about water problems and air quality issues, including mold. These issues precipitated the tenant's move to another location.

The landlord testified that the router and modem, which were in the rental unit at the start of the tenancy, went missing when the tenant moved out. She mentioned the modem deposit of \$150.00. The tenant explained that she didn't take the modem for any nefarious purpose, but rather, to prevent it from getting stolen. (There were break and enters in the neighbourhood.)

Analysis

In an administrative hearing, the person making a claim must provide evidence that it is more likely than not that the facts occurred as claimed. This is known as the "balance of probabilities" standard of proof. The burden of proof is on the person making the claim.

Claim for Unpaid Rent

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent.

Section 45(1) Act states that a tenant may only end a periodic (month to month) tenancy by giving notice to end the tenancy on a date that is (a) not earlier than one month *after*

the date the landlord receives the notice, and (b) the day before the day in the month that rent is payable under the tenancy agreement.

In other words, the tenant could have only ended the tenancy on February 28 (by giving written notice on January 31, for instance), or on March 31 by giving written notice on February 28. Here, the tenant gave notice in the middle of February and moved out on March 15. The tenant mistakenly thought that a “30 days notice” could be given at any time and that the tenancy would 30 days later. That, however, is not the permitted method under the Act.

As such, the earliest that the tenant’s notice to end the tenancy would be effective is March 31, 2022. And it is therefore until the end of March 2022 that the tenant was required to pay rent. Rent was not paid, though required to be paid, and thus I find that the landlord is entitled to compensation in the amount of \$950.00.

Claim for Internet Router and Modem

The landlord’s *Monetary Order Worksheet* lists one entry for a router at \$150.64, a second entry for an internet modem at \$71.95, and a third entry for an internet modem at \$190.34. There are also various invoices and a receipt for various router and modem purchases in evidence. The only invoice that corresponds to an amount claimed in the worksheet is a purchase for \$150.64. With respect to the landlord, I cannot make sense of the remaining amounts and it is unclear to me why two internet modems would be claimed for when only one modem was in the rental unit.

There is no dispute that the modem and router are missing: the tenant admitted that she has the equipment in her possession. The addendum to the tenancy agreement is rather peculiar: the tenant was required to pay a “deposit” so that the landlord could purchase a modem and router. This “deposit” would then be reimbursed at the end of the tenancy “upon final inspection.” (In other words, it was not a deposit in the normal sense of the word.) The clause also stipulates that the internet equipment purchased by the landlord will remain in the rental unit “in the Tenant’s possession.”

Based on all of the above, while it was the landlord who purchased the internet equipment, it was purchased with the tenant’s money. I find it absurd that the landlord would now seek compensation for property that was purchased with the tenant’s \$150.00 “deposit.” What is more, internet was—as stated in the tenancy agreement—provided as a service to be included with the rent. To this end, I am not persuaded that the landlord has proven this aspect of their claim.

Claim for Application Filing Fee

Under section 72 of the Act, an arbitrator can order one party to pay a fee to another party in a dispute resolution proceeding. Typically, when an applicant is successful in their application, the respondent is ordered to pay an amount equal to the applicant's filing fee. In this case, since the applicant was only partly successful, the respondent is only ordered to pay the applicant \$50.00.

Summary

In total, the landlord is awarded \$1,000.00. (\$950.00 for unpaid rent and \$50.00 for the filing fee.)

Under section 38(4)(b) of the Act, I am authorized to allow the landlord to retain the tenant's security deposit after the end of the tenancy. Therefore, the landlord is ordered to retain the security deposit of \$475.00 to partially satisfy the amount awarded. The tenant is ordered to pay to the landlord a sum of \$525.00.

A monetary order in the amount of \$525.00 is issued to the landlord along with this decision. The landlord must serve a copy of the monetary order upon the tenant.

Conclusion

The application is granted, in part.

The landlord is awarded \$1,000.00 and may retain the \$475.00 security deposit. The landlord is granted a monetary order in the amount of \$525.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 21, 2022

Residential Tenancy Branch