



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord May 11, 2022 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing with M.C. to assist. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord and M.C. I told the Landlord and M.C. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord and M.C. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

M.C. confirmed the Landlord was issued a substituted service decision by the RTB allowing service on the Tenant by email. The Landlord submitted the email showing the hearing package and Landlord’s evidence were sent to the Tenant by email June 02, 2022.

Based on the email in evidence, I find the Landlord served the Tenant as permitted in the substituted service decision issued May 31, 2022, and therefore the Tenant is deemed to have received the hearing package and Landlord’s evidence June 05, 2022.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and M.C. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Breaking lease	\$450.00
2	Lock and key replacement	\$82.94
3	Labour to install new lock	\$50.00
4	Filing fee	\$100.00
	TOTAL	\$682.94

The Landlord submitted a written tenancy agreement between the parties. The tenancy started February 21, 2022, and was for a fixed term ending February 28, 2023. Rent was \$900.00 per month due on the 31st day of each month. The Tenant paid a \$450.00 security deposit.

M.C. testified as follows.

The rental unit address is a house with an upper residence and lower suite. The Landlord, the owner of the house, rented a bedroom in the lower suite to the Tenant. The lower suite has its own bathroom and kitchen.

The Tenant moved out of their room April 30, 2022.

The Tenant never provided the Landlord with a forwarding address in writing.

#1 Breaking lease \$450.00

The Tenant moved out earlier than the end of the fixed term and therefore broke the lease. The Tenant moved out April 30, 2022, and their room was re-rented for May 01, 2022. The Tenant paid April rent. The Tenant made it difficult to re-rent the room. The Tenant caused the Landlord anguish in relation to the end of the tenancy.

#2 Lock and key replacement \$82.94

#3 Labour to install new lock \$50.00

The Tenant failed to return their keys at the end of the tenancy and therefore locks on the main entrance door and room door, as well as keys, had to be replaced.

The Landlord submitted the following documentary evidence:

- Text messages between the parties
- A statement from a prior tenant
- A receipt for a new deadbolt and key
- A statement from another tenant

Analysis

Security deposit

Section 38(1) of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I accept the undisputed testimony of M.C. that the Tenant has not provided the Landlord with a forwarding address in writing and therefore section 38(1) of the *Act* has not been triggered. The Landlord was permitted to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Breaking lease \$450.00

I decline to award the Landlord compensation for the Tenant breaking the lease because the Tenant paid April rent and the Landlord re-rented the Tenant's room for May. The Landlord did not suffer any loss due to the Tenant ending the tenancy prior to the end of the fixed term.

I acknowledge that M.C. spoke about the Tenant causing problems for the Landlord in re-renting the room and causing the Landlord anguish regarding the end of the tenancy; however, I decline to award the Landlord compensation for this. In my view, the Application is clear that the Landlord is seeking compensation for the Tenant "breaking the lease". The Landlord is only entitled to compensation for a tenant "breaking a lease" when the Landlord experiences loss as a result. I am not satisfied based on the evidence provided that the Landlord experienced \$450.00 worth of loss due to the Tenant ending the tenancy early. This claim is dismissed without leave to re-apply.

#2 Lock and key replacement \$82.94

#3 Labour to install new lock \$50.00

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must...

- (c) 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.

I accept the undisputed testimony of M.C. that the Tenant did not return the keys to the rental unit to the Landlord at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept the Landlord had to have the locks and keys replaced due to the Tenant's breach. I accept the cost to replace the locks and keys was \$132.94. I find the amount sought reasonable and award the Landlord the amount sought.

#4 Filing fee \$100.00

Given the Landlord has been partially successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Breaking lease	-
2	Lock and key replacement	\$82.94
3	Labour to install new lock	\$50.00
4	Filing fee	\$100.00
	TOTAL	\$232.94

Pursuant to section 72(2) of the *Act*, the Landlord can keep \$232.94 of the security deposit as compensation for the above. Given the Tenant has not yet provided the Landlord with a forwarding address in writing, I decline to order the Landlord to return the remainder of the security deposit to the Tenant at this point.

Conclusion

The Landlord can keep \$232.94 of the security deposit as compensation. Given the Tenant has not yet provided the Landlord with a forwarding address in writing, I decline to order the Landlord to return the remainder of the security deposit to the Tenant at this point.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 31, 2023

Residential Tenancy Branch