



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL-S MNDCL-S FFL

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for unpaid rent pursuant to section 67;
- an order for monetary compensation for loss or other money owed by the Tenant pursuant to section 67;
- authorization to keep the Tenant’s security deposit under section 38; and
- authorization to recover the application fee for the Application from the Tenant pursuant to section 72.

The Landlord’s agent (“ZA”) appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 1:30 pm. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing (“NDRP”) generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance and that ZA and I were the only ones on the conference call. ZA was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

ZA stated the Landlord served the NDRP and its evidence (“NDRP Package”) on the Tenant on May 20, 2022. ZA stated the Landlord used the forwarding address provided by the Tenant on the move-out condition inspection report to address the NDRP Package for posting. ZA provided the Canada Post tracking number for service of the NDRP Package on the Tenant. ZA stated the Canada Post tracking site indicated the NDRP Package was picked up on June 20, 2022. Based on the undisputed testimony of ZA, I find the NDRP Package was served on the Tenant in accordance with sections 88

and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the NDRP Package on May 25, 2022.

Issues to be Decided

Is the Landlord entitled to:

- recover unpaid rent from the Tenant?
- an order for monetary compensation for loss or other money owed by the Tenant?
- authorization to keep the security deposit?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

ZA submitted into evidence a tenancy agreement and addendum dated February 21, 2020 (collectively the "Tenancy Agreement"). The Tenancy Agreement states the tenancy commenced on March 1, 2020, for a fixed term ending February 28, 2021, with rent of \$995.00 payable on the 1st day of each month. The Tenancy Agreement stated the Tenant was responsible for 40% of the electric utility and 40% of the gas utility billed by the Landlord. The Tenant was required to pay a security deposit of \$497.50 by February 21, 2020. ZA stated the Landlord served the Tenant with a notice to increase the rent to \$1,009.00, effective February 1, 2022. ZA submitted into evidence a copy of the Notice of Rent Increase dated October 15, 2021 on Form RTB-7 to corroborate her testimony. ZA stated the Tenant paid the security deposit and the Landlord was holding it in trust for the Tenant. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application. The addendum states:

Late payments, returned and non-sufficient fund cheques (N.S.F.) are subject to a maximum service charge of \$25.00 each, or the then current rate charge for such services by the Bank, whichever is greater. Notwithstanding a service charge, failure to pay rent on the due date shall be a fundamental breach of this

Agreement. This Residential Tenancy Agreement requires that rent be paid promptly on the due date.

ZA submitted into evidence a completed Monetary Order Worksheet on Form RTB-37 in which the Landlord set out its claims as follows:

Receipt or Expense from	Nature of Claim	Amount of Claim
Landlord	Rent for April 2022	\$1,009.00
Landlord	Late filing fees for March and April 2022	\$50.00
Contractor	Cleaning of Rental Unit	\$224.00
Lock Smith	Changing locks to rental unit	\$574.35
Contractor	Rubbish removal	\$140.00
Fortis	February 17 to March 15, 2022	\$16.07
Fortis	March 16 to April 14, 2022	\$26.38
BC Hydro	December 15, 2021 to April 18, 2022	\$305.24
Total:		\$2,345.04

ZA stated the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities on April 1, 2022 and the Tenant vacated the rental unit on April 29, 2022. ZA stated the Tenant did not pay the rent of \$1,009.00 for April 2022. ZA submitted into evidence a copy of the ledger setting out the credits and debits posted on the Tenant's account for the rental unit. ZA stated the Landlord was seeking \$1,009.00 to recover the rent for April 2022. ZA stated the Landlord was also seeking reimbursement of two late payments charges of \$25.00 each for a total of \$50.00. ZA referred to the addendum to the Tenancy Agreement that stated the Tenant was responsible for paying late payment charges of \$25.00 each.

ZA submitted into evidence copies of the move-in condition inspection report performed on February 27, 2020 and the move-out condition inspection report performed on April 29, 2022, both of which were signed by the Landlord's agent and the Tenant. ZA stated the Tenant provided his forwarding address on the move-out condition inspection report. I note that, when I was preparing this decision, I was unable to locate a copy of the move-in and move out condition inspection reports. As such, I issued an Interim Decision dated January 25, 2023, as amended on February 1, 2023, in which I requested the Landlord provide copies of those reports. In a request for a correction to the Interim Decision, the Landlord reported it had submitted copies of the inspection reports. After a further review of the file, I located the inspection reports and found they had been submitted to the RTB on May 10, 2022. As such, it was unnecessary for me to

order the Landlord submit copies of the inspection reports in the Interim Decision, as amended.

ZA stated the Tenant had guests in the rental unit and there was an incident in which they pepper sprayed an employee of a contractor employed by the Landlord who was performing services in the rental unit. ZA stated that, as a result of the incident, the Landlord replaced the style of lock to prevent the Tenant's guests from returning to the rental unit. When I asked, ZA stated the Landlord did not replace a broken lock for the door to the rental unit with a comparable type of lock. ZA stated the Landlord replaced the existing locking mechanism with a more sophisticated locking mechanism. ZA stated the Tenant gave the same guests a copy of the key for the new locking mechanism and this necessitated the Landlord to replace the key a second time. ZA submitted into evidence a copy of the invoice from the locksmith for replacement the locking mechanism and key on one occasion and replacing the key on a subsequent occasion. ZA stated the Landlord is seeking reimbursement from the Tenant of the \$574.35 for the locksmith services.

ZA stated the Tenant owed for 40% of the electrical and gas utility services pursuant to the Tenancy Agreement. ZA submitted into evidence copies of the invoices for BC Hydro totaling \$305.24 and Fortis invoices for \$42.45 to corroborate the Landlord's claim. ZA stated the Landlord was seeking reimbursement of the \$347.69 for the unpaid utilities owed by the Tenant.

ZA referred to the move-out condition inspection report she had submitted earlier in the hearing as evidence of the unclean condition of the rental unit when the Tenant vacated it. ZA submitted into evidence an invoice for cleaning services for \$224.00 and an invoice for garbage removal for \$140.00 and stated the Landlord was seeking reimbursement from the Tenant for these cleaning and garbage removal services.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

- 37(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

Residential Tenancy Branch Policy Guideline 16 (“PG 16”) addresses the criteria for awarding compensation. PG 16 states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

1. Security Deposit

Sections 23, 24, 35, 36, 38(1), 36(6) and 38 of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
 - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [2 opportunities for inspection],
 - (b) *having complied with section 23 (3), does not participate on either occasion, or*
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 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.*

[...]

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

ZA stated the Landlord and Tenant performed the move-in and move-out condition inspections and provided copies of the signed move-in condition inspection report dated February 27, 2020 and move-out condition inspection report dated April 29, 2022. Based on the undisputed testimony of ZA, I find the Landlord complied with the requirements of sections 23(1) and 35(1) of the Act. ZA stated the Tenant provided his forwarding address on the move-out condition inspection report on April 29, 2022. Pursuant to section 38(1) of the Act, the Landlord had 15 days, being May 14, 2022, to make the Application to seek unpaid rent and monetary compensation for damages and cleanup of the rental unit. The records of the RTB disclose the Landlord made the Application on May 10, 2022. As such, the Landlord complied with the requirements of section 38(1) and it is entitled to make its claims against the security deposit of \$497.50. As the Landlord made its Application on time, the Tenant is not entitled to seek the return of double the amount of the security deposit pursuant to section 38(6.5) of the Act.

1. Unpaid Rent and Recovery of Late

ZA stated the Tenant did not pay the rent for April 2022 in the amount of \$1,009.00. ZA submitted into evidence a copy of the ledger setting out the credits and debits posted on the Tenant's account for the rental unit. ZA stated the Landlord was seeking \$1,009.00 to recover the rent for April 2022. ZA stated the Landlord was also seeking reimbursement of two late payments charges of \$25.00 each for a total of \$50.00. ZA referred to the addendum to the Tenancy Agreement that stated the Tenant was responsible for paying late payment charges of \$25.00 each.

Based on the undisputed testimony and evidence provided by ZA, I find the Landlord has demonstrated, on a balance of probabilities, the Tenant owes the Landlord \$1,009.00 for rent for April 2022 and \$50.00 for late payments fees. As such, I order the Tenant to pay the Landlord \$1,059.00 for unpaid rent and recovery of late fees pursuant to section 67 of the Act. Pursuant to section 72(2) of the Act, the Landlord may keep the security deposit of \$497.50 in partial satisfaction of the unpaid rent and late fees.

2. Unpaid Utilities

ZA stated the Tenant was responsible for paying 40% of the electrical and gas utility services for the rental unit pursuant to the Tenancy Agreement. ZA submitted into evidence copies of the invoices for BC Hydro totaling \$305.24 and Fortis invoices for \$42.45 to corroborate her testimony. ZA stated the Landlord was seeking reimbursement of the \$347.69 for the unpaid utilities owed by the Tenant. I have reviewed the Tenancy Agreement and find the Tenant was responsible for payment of 40% of the electrical and gas utilities. Based on the undisputed testimony of ZA, I find the Landlord has demonstrate, on a balance of probabilities, that the Tenant is responsible for payment of \$347.69, representing 40% of the hydro and gas utilities. As such, I find the Tenant must pay the Landlord for \$347.69 to reimburse the Landlord for the unpaid utility charges pursuant to section 67 of the Act.

3. Recovery of Cleaning Charge and Garbage Removal

ZA referred to the move-out condition inspection report that evidenced the unclean condition of the rental unit. ZA stated the Landlord incurred the expenses of 224.00 for cleaning the rental unit and \$140.00 for garbage removal services to clean the rental unit. ZA stated the Landlord was seeking reimbursement from the Tenant of \$224.00 for the cleaning services and \$140.00 for garbage removal services.

Section 32(2) of the Act states:

- 32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the undisputed testimony and evidence of ZA, I find the Tenant did not comply with the requirements of section 32(2) of the Act. I find that, on a balance of probabilities, the Landlord incurred \$364.00 for cleaning and garbage removal services as a result of the Tenant's breach of section 32(2). As such, I find the Tenant must reimburse the Landlord for those services. Based on the foregoing, I order the Tenant to pay the Landlord \$364.00 for cleaning and garbage removal services pursuant to section 67 of the Act.

4. Locksmith Services

ZA stated the Tenant had guests in the rental unit and there was an incident in which they pepper sprayed an employee of a contractor employed by the Landlord who was performing services in the rental unit. ZA stated that, as a result of the incident, the Landlord replaced the style of lock to prevent the Tenant's guests from returning to the rental unit. ZA stated the Tenant gave the same guests a copy of the key for the new locking mechanism and this necessitated the Landlord to replace the key a second time. ZA submitted into evidence a copies of the two invoices from the locksmith for replacement the locking mechanism and key on one occasion and replacing the key on a subsequent occasions.

Based on the undisputed testimony of ZA, I find the Landlord incurred \$574.35 for locksmith services. However, as stated in PG 16, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. Based on the testimony of ZA, the Landlord did not replace a the lock to the entry door of the rental unit with a comparably type of lock, but actually replaced the locking mechanism with a more sophisticated locking mechanism. As such, I find the Landlord has installed a more expensive and improved style of lock. I find that to award the Landlord the full \$574.35 it has claimed would be inconsistent with the restoring the Landlord to the same position as if the damage or loss had not occurred. I find a reasonable estimate of the loss the Landlord suffered is one-half of the \$574.35 claimed by the Landlord for the locksmith services. Based on the foregoing, I find the Landlord is entitled to recover one-half of \$574.35, being \$287.18. As such, I order the Tenant to pay the Landlord \$287.18 to reimburse it for the locksmith services pursuant to section 67 of the Act.

Filing Fee of the Application

As the Landlord has been substantially successful in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application.

Conclusion

I order the Tenant to pay the Landlord \$1,660.37 as follows:

Purpose	Amount
Unpaid Rent for April 2022	\$1,009.00
Fee for Late Payment of Rent (\$25.00 x 2)	\$50.00
Unpaid electrical and gas utilities	\$347.69
Cleaning services	\$224.00
Garbage removal services	\$140.00
Locksmith services	\$287.18
Filing fee of Landlord's Application	\$100.00
Less: Tenant's Security Deposit	-\$497.50
Total:	\$1,660.37

The Landlord must serve the Monetary Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: February 2, 2023

Residential Tenancy Branch