



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 filed by the Landlord April 29, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord 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.

The Landlord testified that the hearing package and their evidence were sent to the Tenant by email and registered mail. The Landlord testified that the registered mail package was sent May 11, 2022, to the Tenant’s forwarding address which was provided by the Tenant in a text message. The Landlord provided Tracking Number 158. I looked Tracking Number 158 up on the Canada Post website which shows the package was delivered and signed for May 13, 2022.

Based on the undisputed testimony of the Landlord and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act") on May 11, 2022. Based on the Canada Post website information, I am satisfied the Tenant received the package May 13, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was 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 recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security and pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent	\$920.00
2	Cleaning	\$280.00
3	Unpaid utilities	\$209.10
4	Utility deposit	\$95.00
5	Filing fee	\$100.00
	TOTAL	\$1,604.10

The Landlord submitted a written tenancy agreement. The tenancy started October 01, 2021, and was for a fixed term ending September 30, 2022, then became month-to-month. Rent was \$920.00 per month due on the first day of each month. The Tenant paid a \$460.00 security deposit and \$460.00 pet damage deposit.

The Landlord testified as follows.

The Tenant moved out of the rental unit March 31, 2022.

The Tenant provided their forwarding address to the Landlord by text message April 13, 2022.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security or pet damage deposits.

The parties did a move-in inspection. The Landlord gave the Tenant the Condition Inspection Report ("CIR") to complete, the Tenant filled the CIR out and therefore had a copy of it. The Landlord took photos at move-in.

The parties did not do a move-out inspection. The parties agreed to meet at the rental unit March 31, 2022, when the Landlord arrived the Tenant was not done moving. The Landlord left and came back; however, the Tenant was gone. The Landlord looked around the rental unit and took photos. The CIR was not completed at move-out.

The pet damage deposit was kept towards rent, utilities and cleaning.

The Tenant approved the Landlord hiring cleaners verbally and by text.

In relation to item 1, the Tenant did not pay March rent and did not have authority under the *Act* to withhold rent.

In relation to item 2, the Tenant left the rental unit dirty at the end of the tenancy and the Landlord had to hire cleaners which cost \$280.00.

In relation to item 3, the Tenant owes \$209.10 for utilities.

In relation to item 4, the Tenant did not pay the \$95.00 for utilities for March. The utilities owing for March ended up being more than \$95.00.

The Landlord submitted the following documentary evidence:

- A Statement of Accounts

- Cleaning invoice
- An outline of amounts owing
- Utility bills
- Timeline of events

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the Landlord, I find the Tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the undisputed testimony of the Landlord, I find the Landlord did extinguish their right to claim against the security and pet damage deposits pursuant to section 36 of the *Act* by not completing the CIR at move-out as required.

Pursuant to RTB Policy Guideline 31, the Landlord was only allowed to keep the pet damage deposit for pet damage.

The tenancy ended March 31, 2022, when the Tenant moved out of the rental unit.

The Tenant provided their forwarding address to the Landlord by text message April 13, 2022. Text message is a permitted way to provide a forwarding address because it is in writing, as required.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address in writing to repay the security and pet damage deposits or file a claim against them where permitted. Here, the Landlord had 15 days from April 13, 2022. The Application was filed April 29, 2022, one day late. The Landlord failed to comply with section 38(1) of

the *Act*. Further, the Landlord was not permitted to claim against the pet damage deposit and had to return this to the Tenant by April 28, 2022.

Given the Landlord did not comply with section 38(1) of the *Act*, the Landlord must return double the security and pet damage deposits to the Tenant pursuant to section 38(6) of the *Act*. **The Landlord must pay the Tenant \$1,841.62**, which includes the interest owed.

The Landlord is still permitted to claim for damage and loss, and I consider this now.

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.

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

In relation to item 1, section 26 of the *Act* states:

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.

The Tenant lived in the rental unit for March 2022 and did not pay March rent. The Tenant did not have authority under the *Act* to withhold rent. The Tenant owes the Landlord **\$920.00** in unpaid rent.

In relation to item 2, section 37 of the *Act* states:

(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...

The Tenant left the rental unit dirty at the end of the tenancy in breach of section 37 of the *Act*. The Landlord had to hire cleaners which cost \$280.00. This amount is reasonable, and the Tenant owes the Landlord **\$280.00**.

In relation to item 3 and 4, the addendum to the tenancy agreement sets out that the Tenant owes the Landlord for utilities and how this is calculated and charged. The Tenant failed to pay **\$304.10** in utilities and owes the Landlord this amount.

Given the Landlord has been successful in the Application, the Landlord is entitled to recover the **\$100.00** filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid rent	\$920.00
2	Cleaning	\$280.00
3	Unpaid utilities	\$209.10

4	Utility deposit	\$95.00
5	Filing fee	\$100.00
	TOTAL	\$1,604.10

The Tenant owes the Landlord \$1,604.10. However, the Landlord owes the Tenant \$1,841.62, being double the deposits plus interest. The Landlord can keep the \$1,604.10 from the amount owing to the Tenant. The Landlord must return \$237.52 to the Tenant and the Tenant is issued a Monetary Order in this amount.

Conclusion

The Tenant is issued a Monetary Order for \$237.52. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 02, 2023

Residential Tenancy Branch