



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S FFL

Introduction

This dispute relates to the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$7,533.22 for damages,
2. To retain the \$625 security deposit towards money owing,
3. Filing fee.

The parties listed on the cover page of this decision attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Once evidentiary issues were addressed the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses. The parties confirmed their understanding that the decision would be emailed to both parties.

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 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 a tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2021 and converted to a month-to-month tenancy after April 1, 2022. Monthly rent was \$1,250 per month and was due on the first day of each month.

Both parties agree the tenant vacated the rental unit on March 15, 2023.

The landlord's monetary claim of \$7,533.22 is comprised as follows:

1. TV cable, \$27.99
2. Repair lock and lost key, \$133.98
3. Repair stair, \$934.50
4. Repair sidewalk and driveway, \$6,336.75
5. Filing fee, \$100

Regarding item 1, the parties reached a mutual agreement for \$27.99 for the cost of a missing TV cable. This agreement was resolved by way of section 63 of the Act and will be accounted for later in this decision.

Regarding item 2, the landlord has claimed \$133.98 to rekey the rental unit as the tenant failed to provide both keys to the rental unit. The Condition Inspection Report (CIR) was reviewed and indicates that 2 keys were provided to the tenant at the start of the tenancy and only 1 key was provided at the end of the tenancy by the tenant. The tenant refused to sign the outgoing CIR. The tenant claims only 1 key was given however the tenant signed for 2 keys on the incoming CIR. The landlord presented a receipt for \$133.98 from a locksmith company.

Regarding items 3 and 4, the landlord has claimed \$934.50 and \$6,336.75 for what the landlord describes as overuse of salt to remove snow from the rental unit stairs, driveway and sidewalk. The photo evidence presented was blurry and not of good quality. There were no before photos to compare the condition of the stairs, driveway and sidewalk at the start of the tenancy. The tenant claims the stairs, driveway and sidewalk were all damaged before the tenancy began and denies that the salt used to melt the ice formed on the stairs, driveway and sidewalk, which were dangerous for the tenant, caused the damage claimed.

The landlords claim that it is the tenant's responsibility to shovel the snow from their stairs, driveway and sidewalk, which I will address later in this decision. The landlords live in the upper portion of the home, while the tenant had occupied the basement suite.

The landlord provided 2 quotes for the amount claimed to repair the stairs, driveway and sidewalk and reseal them.

Regarding the filing fee, that will be addressed later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

Item 1 - As the parties reached a mutual agreement for \$27.99 for the cost of a missing TV cable, I order the parties to comply with their settlement agreement pursuant to section 63 of the Act.

Item 2 - The landlord has claimed \$133.98 to rekey the rental unit. I find that the CIR supports the landlord's version of events and not the tenant's version of events in terms

of the number of keys provided at the start and end of the tenancy. Therefore, I find the tenant breached section 37(2)(b) of the Act which requires the tenant to return all keys, not just one of the 2 keys provided. As such, I am satisfied with the receipt submitted and find the tenant owes the landlord the full amount of **\$133.98** as claimed for this item.

Items 3 and 4 – The landlord has claimed \$934.50 and \$6,336.75 for what the landlord describes as overuse of salt to remove snow from the rental unit stairs, driveway, and sidewalk. I find the photo evidence presented by the landlord to be blurry and not of good quality. I also note there were no before photos to compare the condition of the stairs, driveway, and sidewalk at the start of the tenancy.

In addition, the landlords claim that it is the tenant's responsibility to shovel the snow from their stairs, driveway, and sidewalk, which I find is mostly incorrect. RTB Policy Guideline 1 – *Responsibility for Residential Premises* (Guideline 1) states the following under Property Maintenance:

The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

...

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

I find that by residing in the upper portion of the home that the landlord is responsible for shovelling the snow on the shared driveway and shared sidewalk and that the tenant is only responsible for shovelling snow on their entrance stairs. In addition, I find the landlord has provided insufficient evidence of damage caused by the tenant as I find the photo evidence is not clear and does not show obvious damage, especially without before photos to compare them to. Given the above, I dismiss items 3 and 4 without leave to reapply, due to insufficient evidence.

- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

- What should happen to the tenant's security deposit under the Act?

Based on the above, I find the landlord has established a total monetary claim of **\$261.97**, comprised of \$27.99 by way of a settlement agreement for item 1, \$133.98 for item 2 plus the \$100 filing fee. Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain \$261.97 from the tenants' security deposit of \$625, which I find has accrued \$4.81 in interest, for a total security deposit of \$629.81 including interest, in full satisfaction of the landlord's monetary claim.

Pursuant to section 67 of the Act, I grant the tenant a monetary order for the pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant for their security deposit balance in the amount of **\$367.84**.

Conclusion

The landlord's claim is partially successful. The landlord has established a total monetary claim of \$261.97.

The landlord has been authorized to retain \$261.97 from the tenant's \$629.81 security deposit which includes interest, in full satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The tenant is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants in the amount of \$367.84.

Before enforcing this order, the tenant must serve it on the landlord and then it may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlord, if necessary.

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: May 24, 2023