



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of \$1,439.05 for damage to the unit, site or property, for authorization to retain the tenant's security deposit and pet damage deposit, for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlords JP and PA (landlords) and the tenant BH (tenant) attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

There was no dispute that the landlords' documentary evidence was received by the tenant prior to the hearing and that the tenant had the opportunity to review that evidence. The tenant confirmed that they did not serve any documentary evidence in response to the landlords' claim. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Are the landlords entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 26, 2018 and was scheduled to revert to a month to month tenancy after September 30, 2019. The tenant stated they vacated the rental unit on May 3, 2019, while the landlords stated they were made aware on May 4, 2019 via text message from the tenant. The monthly

rent was \$945.00 per month and due on the first day of each month. The tenant paid a \$472.50 security deposit and a \$200.00 pet damage deposit at the start of the tenancy, which the landlords continue to hold.

The landlords' monetary claim of \$1,439.05 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid/loss of May 2019 rent	\$945.00
2. Caretaker's time and expenses A	\$275.84
3. Caretaker's time and expenses B	\$218.21
TOTAL	\$1,439.05

Regarding item 1, the landlords have claimed \$945.00 for unpaid May 2019 rent. The tenant stated that his co-tenant DR (co-tenant), who was not served for this application and has not been named as a respondent as a result, suffered a mental breakdown and lost her job, leaving the tenant in a position where they could no longer afford to pay rent and had to vacate the rental unit. The parties agreed that the tenant vacated the rental unit without proper notice under the Act on May 3, 2019. The landlords testified that they could not account for all of the keys for the rental unit after the tenant vacated the rental unit. The landlords testified that they were able to re-rent the rental unit effective June 1, 2019.

Regarding items 2 and 3, the landlords testified that the total costs for items 2 and 3 being claimed is \$494.05. The landlords confirmed that there was no incoming Condition Inspection Report (CIR) at the start of the tenancy, which I will address later in this decision. A copy of the outgoing CIR was submitted in evidence and is dated May 3, 2019. The landlords wrote on the outgoing CIR in the incoming column that the unit had just been renovated prior to move-in with new appliances, floor coverings, counters, cabinets and completed re-paint of all walls.

Photographic evidence of the renovations completed before the tenancy began were submitted in evidence.

The landlords submitted in evidence two invoices, both of which match the amounts being claimed for items 2 and 3. The first invoice in the amount of \$218.72 indicates the following costs:

1. Labour – reattach closet screws & curtain rods ½ hour at \$25.00 per hour; \$12.50
2. Remove damaged door from unit, take to Windsor Plywood, pick up door, paint and re-install in unit 1.5 hours at \$25.00 per hour; \$37.50
3. Open house to show to prospective renters on May 19, 2.5 hours at \$25.00 per hour; \$62.50
4. Materials – Apartment deodorizer; \$8.36

5. Repair damaged door at Windsor Plywood; \$97.35

The second invoice in the amount of \$275.84 indicates the following costs:

1. Labour - Show unit to prospective renters May 20-28 and call BC Hydro to reactive account and call property manager, 1 hour at \$25.00 per hour; \$25.00
2. Double-check electricity is back on in rental unit and to hand over keys to new tenant on June 1, 2019, ½ hour at \$25.00 per hour; \$12.50
3. Track down keys via caretaker, remove locks and take to get re-keyed, re-key locks and review incoming inspection report with new tenants, pickup re-keyed locks and re-install, 3.5 hours at \$25.00 per hour; \$87.50
4. Materials – 6 copies of tenant application forms; \$3.00
5. Re-key mailbox as mailbox key not returned; \$84.00
6. Re-key unit door and 4 keys; \$63.84

The renovation photos submitted by the landlords were taken from a distance and did not provide a close-up of the curtain rod for instance. The landlords also provided photos taken after the tenancy ended. The parties disputed the number of keys and fobs returned at the end of the tenancy. There is no indication on the tenancy agreement or the addendum to the tenancy agreement regarding the number of keys and fobs provided by the landlords to the tenant.

The tenant testified that two keys and two fobs were left on the counter for the landlords and was unsure how one set could go missing as the landlords stated only 1 mailbox keys, 1 house key and 1 fob for entry into the building were left by the tenant. The tenant admitted during the hearing that they left the rental unit unlocked with the keys inside and that there was no damage to the door when they vacated the rental unit and left the unit unlocked on May 3, 2019. The landlords stated that it was not until May 4, 2019 that the tenant advised the landlords by text communication that the keys were in the rental unit. The landlords stated that between May 3, 2019 and May 4, 2019, the tenant was still responsible for the rental unit, until all keys were returned and that the tenant is responsible for any damage to the rental unit by leaving the rental unit unlocked on May 3, 2019 and then leaving the premises. The photo of the door shows a minimum of 15 holes, each of which appear to be the size of a fist when compared to the size of the door handle.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence before me 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.

I will first address the lack of incoming Condition Inspection Report. Section 23 of the Act applies and states:

Condition inspection: start of tenancy or new pet

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.

Based on the above, I find the landlords breached section 23 of the Act by failing to complete an incoming CIR. Therefore, I caution the landlords to ensure that an incoming CIR is completed for all future tenancies.

Item 1 - The landlords have claimed \$945.00 for unpaid May 2019 rent. Section 26(1) of the Act applies and states:

Rules about payment and non-payment of rent

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.

In addition, section 45(1) of the Act applies and states:

Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the above, I find the tenant breached sections 26(1) and 45(1) of the Act by failing to provide proper notice to end the month to month tenancy, and failed to pay rent for May 2019. Therefore, I find the landlords have met the burden of proof and I grant the landlords **\$945.00** as claimed for this portion of the landlords' claim.

Items 2 and 3 - The landlords total claim for items 2 and 3 is \$494.05. I find the invoices match the amounts being claimed. As no incoming CIR was completed however, I find the curtain rod before photos are insufficient to support that the curtain rod was in good condition at the start of the tenancy as the before photos were taken at a distance. Therefore, I find the landlords have not provided sufficient evidence for the \$12.50 portion claimed towards the curtain rod. As a result, I dismiss the \$12.50 portion related to the curtain rod, without leave to reapply due to insufficient evidence.

Regarding the damaged door, I agree with the landlords that the tenant is responsible for any damage sustained after leaving the rental unit unlocked on May 3, 2019. Section 37(2)(b) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(b) **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.

[Emphasis added]

Based on the above, I find that the tenant failed to give the landlord the keys and instead left the keys in an unlocked and unsecured rental unit. Therefore, I find the tenant breach section 37(2) of the Act and is liable for the damages as a result. In addition, I find the photographic evidence supports purposeful damage to the interior door and that the landlords are entitled to the full amount of the remainder for items 2 and 3, less the \$12.50 amount for the curtain rod already dismissed above.

I find the amount claimed by the landlords and indicated on the two invoices describing the time involved to re-rent the rental unit and repair damage to be very reasonable. I also prefer the evidence of the landlords over that of the tenant in terms of the rental unit and mailbox keys, as I find the landlords provided more consistent testimony and that leaving the keys in an unsecured rental unit is not reasonable. Based on the above, I find the landlords have met the burden of proof for in the amount of **\$481.55** for items 2 and 3, which reflects the \$12.50 deducted from the total of \$494.05 claimed.

As the landlords' application was mostly successful, I grant the landlords the recovery of the filing fee of **\$100.00** pursuant to section 72 of the Act.

I find that the landlords have established a total monetary claim in the amount of **\$1,526.55**, comprised of \$945.00 for item 1, \$481.55 for items 2 and 3 inclusive, plus the recovery of the \$100.00 filing fee. As the landlords have claimed against the tenant's security deposit of \$472.50 and the pet damage deposit of \$200.00, which have accrued no interest to date and pursuant to section 38 and 72 of the Act, I authorize the landlords to retain the tenant's full combined deposits of \$672.50 in partial satisfaction of the landlords' monetary claim. Given the above, I grant the landlords a monetary order under section 67 of the Act for the balance owing by the tenant to the landlords in the amount of **\$854.05**.

Conclusion

The landlords' application is mostly successful.

The landlords have established a total monetary claim in the amount of \$1,526.55. The landlords have been authorized to retain the tenant's full \$672.50 combined deposits in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlords in the amount of \$854.05.

If the landlords require enforcement of the monetary order, the monetary order must first be served on the tenant and 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 as indicated above.

The monetary order will be emailed to the landlords only for service on the tenant.

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: January 10, 2020

Residential Tenancy Branch