



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$1,703.63 for damage to the unit, site or property, for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord, a witness for the landlord HL (witness) who did not provide testimony, the tenant CR (tenant), and a tenant advocate SM (tenant advocate) attended the teleconference hearing. The parties who testified were affirmed and the hearing process was explained to the parties. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that they had the opportunity to review the documentary evidence served upon them by the landlord prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence on the landlord prior to the hearing.

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 at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. If a monetary order is granted to the landlord, it will be emailed to the landlord only for service on the tenant.

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 the tenancy agreement was submitted in evidence. A month to month tenancy began on August 26, 2019. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. A security deposit of \$500.00 was paid by the tenants, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,703.63, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Landfill trip for garbage (\$13.00) plus gas (\$7.80)	\$20.80
2. Cleaning supplies	\$47.83
3. Replacement of queen sized bed frame	\$35.00
4. Cleaning	\$600.00
5. Unpaid November 2019 rent	\$1,000.00
TOTAL	\$1,703.63

Regarding items 1 and 2, during the hearing the parties reached a mutually settled agreement pursuant to section 63 of the Act, which I will described further below.

Regarding item 3, the landlord has claimed \$35.00 for the cost to replace what the landlord described was a bent bed frame that was not bent at the start of the tenancy. The tenant did not agree with this portion of the landlord's claim. The landlord admitted that they did not do a formal written incoming Condition Inspection Report (CIR) at the start of the tenancy, which I will address later in this decision. The landlord referred to a receipt in the amount of \$35.00 for this portion of their claim.

Regarding item 4, the landlord has claimed \$600.00 for the cost to clean what the landlord described as a dirty rental unit left behind by the tenant. The tenant testified that she cleaned the rental unit before vacating the rental unit. The landlord confirmed

that they did not do an outgoing CIR as the tenant vacated without notice. Although the tenant stated that she left a voice message for the landlord the tenant did not provide the date in which the voice message was left. The landlord vehemently denied that any messages were left for the landlord before the tenant vacated the rental unit. The landlord testified that the only way they became aware that the rental unit had been vacated was when the landlord contacted the power company and the power company informed the landlord on either November 5th or 6th of 2019 that the power was removed from being in the tenants' names. The landlord clarified that no key was returned as a punch code was used to enter the rental unit.

In support of the cleaning costs, the landlord referred to 5 colour photos, which the landlord stated were taken after the tenant vacated the rental unit. The landlord also submitted in evidence a cleaning receipt in the amount of \$600.00, which is dated November 22, 2019 and indicates in part:

Cleaning carpet, walls, suite #2 contents

The suite number matches the suite address. The landlord testified that \$600.00 was comprised of 30 hours of cleaning at \$20.00 per hour. The landlord described the dirty condition of the rental unit shown in the photo evidence. The photos submitted by the landlord show visible dirt and debris on the flooring and personal items throughout the rental unit on the floor and furniture. There are garbage bags, a sink full of items, and what appears to be a rental unit that was not left in a clean condition, which will be address later in this decision.

The tenant's advocate questioned why the amount was so high for \$600.00. The landlord replied by stating that the amount was due to the condition of the rental unit, comprised of 30 hours of cleaning were required to clean it at \$20.00 per hour, which also included carpet cleaning.

Regarding item 5, the landlord has claimed for unpaid rent of November 2019 in the amount of \$1,000.00. The landlord testified that the tenant vacated the rental unit without notifying the landlord in writing and providing proper one month of notice under the Act. As noted above, the tenant testified that they left a voice message for the landlord but did not supply the date in which they left the voice message. The landlord vehemently disputed that any voice message was left by the tenant and as noted above, the landlord only became aware that the rental unit was vacant through a conversation with the power company. There is no dispute that there was no written notice to end the tenancy provided by the tenant.

The landlord testified that they received the tenant's written forwarding address on November 26, 2019. The landlord failed their application on December 6, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, 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 this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1 and 2 – As noted above, the parties reached a mutual agreement for items 1 and 2 as noted above. This settlement agreement was reached in accordance with section 63 of the Act. The parties were informed that a mutual agreement was made on a voluntary basis and were informed of the binding nature of mutual agreements for items 1 and 2. Therefore, I find the tenant agreed to pay the landlord a total of **\$68.63** for items 1 and 2, comprised of \$20.80 for item 1 and \$47.83 for item 2.

I will now deal with the incoming CIR. Section 23 of the Act requires a landlord to complete a Condition Inspection Report at the start of the tenancy in accordance with the Regulation. I find the landlord failed to fully complete the incoming CIR and as a result, I **caution** the landlord to comply with section 23 of the Act in the future. I make no finding regarding the outgoing CIR for the reasons stated in item 5 below.

Item 3 – Regarding item 3, the landlord has claimed \$35.00 for the cost to replace what the landlord described was a bent bed frame that was not bent at the start of the tenancy. The tenant did not agree with this portion of the landlord's claim. Although the landlord submitted a receipt for \$35.00 in evidence, I find the lack of an incoming CIR results in the landlord being unable to prove that the bed frame was not bent at the start of the tenancy. Therefore, I dismiss this portion of the landlord's claim without leave to reapply, due to insufficient evidence. I find the landlord has failed to meet parts one and two of the test for damages or loss.

Item 4 - The landlord has claimed \$600.00 for the cost of cleaning. Although the amount of the invoice was questioned by the tenant's advocate, I find the photographic evidence supports that the rental unit was left in a dirty condition and not left reasonably clean by the tenant. Section 37 of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and**

(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 the tenant breached section 37(2)(a) of the Act by failing to leave the rental unit in reasonably clean condition. Therefore, I am satisfied that the landlord was required to spend \$600.00 as claimed to clean the rental unit to a reasonably clean condition. I find the photos and receipt supports that the tenant did not make any attempt to clean the rental unit, which is contrary to the tenant's testimony.

Therefore, I grant the landlord **\$600.00** as claimed for this portion of the landlord's claim. I am satisfied that the landlord has met the burden of proof.

Item 5 - The landlord has claimed for unpaid rent of November 2019 in the amount of \$1,000.00. There is no dispute that there was no written notice to end the tenancy provided by the tenant. Section 45 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.**

[Emphasis added]

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act applies and states in part:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy **must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

[Emphasis added]

Based on the above, I find the tenant breached section 45(1) and 52 of the Act by failing to provide written notice to end the tenancy on a date in writing earlier than November 1, 2019. Therefore, I find the tenancy did not end until November 30, 2019 and that the tenant owes the landlord **\$1,000.00** for unpaid November 2019 rent as claimed. I also find the landlord filed their application in accordance with the Act within 15 days pursuant to section 38 of the Act as the landlord filed their application on December 6, 2019, and the written forwarding address was received on November 26, 2019.

Consistent with my findings above, I find the landlord was unable to schedule an outgoing CIR with the tenant as the tenant vacated without proper notice in writing and did not provide their written forwarding address until the following month.

As the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**. The landlord continues to hold the tenant's security deposit of \$500.00, which has accrued \$0.00 in interest to date.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$1,768.63** comprised of \$68.63 for items 1 and 2 resolved by mutual agreement, \$600.00 for item 4, \$1,000.00 for item 5, plus \$100.00 for the recovery of the cost of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit of \$500.00. **I authorize** the landlord to retain the tenants' entire **\$500.00** security deposit in partial satisfaction of the landlord's monetary claim.

I grant the landlord a monetary order under section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$1,268.63**.

I caution the landlord to comply with section 23 in the future by fully completing the condition inspection report in accordance with the Act and Regulation.

I caution the tenant to comply with sections 37, 45 and 52 of the Act in the future.

Conclusion

The landlord's application is mostly successful.

The landlord has established a total monetary claim in the amount of \$1,768.63. The landlord has been authorized to retain the tenant's full \$500.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order in the amount of \$1,268.63 as noted above.

If the landlord requires enforcement of the monetary order, the landlord must first serve the monetary order on the tenant with a demand letter, and then it may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Both parties have been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord 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: February 7, 2020

Residential Tenancy Branch