



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MNDC-S, MNR-S, MND-S, FF
For the tenant: MNSDS-DR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The landlord applied on July 8, 2020, for:

- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit to use against a monetary award;
and
- recovery of the filing fee.

The tenant applied on June 29, 2020, under the direct request process, for:

- a return of her security deposit.

The landlord's agents and the tenant attended the telephone conference call hearing.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

I have reviewed the oral, written, and digital evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I provide only a summary of that which is relevant regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant also claimed monetary compensation of \$812.50 due to an alleged loss of quiet enjoyment, mental anguish, and discrimination.

Claims unrelated to security deposits are not appropriate for applications under the direct process. Additionally, I did not see evidence from the tenant providing a breakdown or calculation for this additional claim.

I therefore did not consider the tenant's additional claim. The tenant is at liberty to make an application dealing specifically with other matters related to this tenancy.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to use her security deposit to partially satisfy a monetary award, and to recovery of her filing fee?

Is the tenant entitled to a monetary order for the amount of her security deposit?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of May 1, 2020, a fixed term of not less than 12 months, monthly rent of \$1,625, due on the 1st day of the month, and a security deposit of \$812.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The undisputed evidence was that the tenant moved into the rental unit early, on April 17, 2020.

The landlord retained the tenant's security deposit, having made this claim against it.

Landlord's application –

The landlord's monetary claim listed in a monetary order worksheet is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. June 2020 rent	\$1,625.00
2. Lease break fee	\$500.00
3. Cleaning/repair	\$1,165.00
4. Filing fee	\$100.00
TOTAL	\$3,390.00

Within the landlord's evidence, was a breakdown of the cleaning and repairs claim, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fridge	\$20.00
2. Stove	\$20.00
3. Cupboards	\$65.00
4. Bathroom	\$75.00
5. Light fixtures	\$37.00
6. Walls/ceilings/closets	\$260.00
7. Windows/tracks/screens	\$120.00
8. Floors (vacuum & wash)	\$100.00
9. Garbage removal	\$50.00
10. Outside cleaning	\$50.00
11. Carpet cleaning	\$273.00
12. Stove bowls replacement	\$44.81
13. Living room screen repairs	\$50.91
TOTAL	\$1165.72

In support of their claim, the agent, CH, said that she heard reports on June 2, 2020 that the tenant was moving out of the rental unit. Thereafter, according to CH, she posted a

notice of entry and on June 4, 2020, she entered and determined the rental unit was vacant. The landlord said that the tenant left owing the monthly rent for June, 2020.

As to the lease break fee, the landlord's agents referred to the clause in the tenancy agreement which states that the tenant will pay the amount of \$500 in the event she terminates the tenancy in less than 12 months.

As to the landlord's claim for cleaning and damages, the landlord submitted a detailed breakdown in their evidence for individual items, such as cleaning out appliances and building elements, garbage removal and carpet cleaning as noted above.

Filed into evidence was a receipt from a carpet cleaning company and a move-in/move-out charge analysis.

The agent said she and another person cleaned the rental unit after the tenant vacated. The agent described that the tenant left crumbs in the kitchen cupboard, the tub and stove elements were not cleaned. The tracks in the window were not cleaned and the carpet was quite dirty and stained.

The agent submitted that they performed the move-out inspection, as the tenant "skipped", leaving no forwarding address at the time.

In response to my inquiry, the landlord said that the bowls around the stove elements were brand new when the tenancy began and due to the tenant's damage, they had to be replaced. The landlord filed a receipt for the costs.

Additional filed evidence included photographs of the rental unit at the end of the tenancy.

Tenant's response –

The tenant submitted that she vacated the rental unit due to the letter she received on May 15, 2020, from the landlord's agent, CH, which ended the tenancy.

The letter informed the tenant that if her guests were caught on the property, the lease was terminated. Filed into evidence was a copy of the letter.

The letter, among other things, stated the following:

I have noticed that your boyfriend and his son have been residing in your unit since you moved in. This unit was rented to you and your 3 children ONLY. By having additional unregistered occupant in your unit is a breach of your tenancy agreement. Due to this breach of your tenancy agreement we have the right to terminate your tenancy immediately. As they are not registered tenants they are to be considered as trespassers, and if they do not vacate the premises by noon on Friday, May 15th, 2020 your tenancy will be terminated.

[Reproduced as written]

The tenant said that she emailed the agent with proof that the guests did not live in the rental unit, as they were only visitors; however, the agent would not accept this evidence. Filed into evidence was a copy of a letter from a social worker from the Ministry of Children and Family Development, who stated that she was the legal guardian to the youth that has been visiting the tenant. The social worker said that the tenant was the stepmother to the youth, and was married to, but separated from, the youth's father. The social worker verified that the youth does not live with the tenant or her children, but lives with his caregiver in close proximity. The social worker was not able to provide further details as the youth was protected by confidentiality.

The tenant submitted she attempted to execute a mutual agreement to end the tenancy with the landlord's agents here, but they refused to sign.

The tenant said that the landlord changed the locks to the rental unit and she was unable to do a final cleaning and remove the rest of her personal belongings. The tenant submitted that since the landlord's agent changed the locks, they are not entitled to the monthly rent for June.

The tenant filed a copy of the landlord-issued Move Out Statement, which was dated June 14, 2020, listing the tenant's new address, proving the landlord had her forwarding address.

Filed into evidence was a video from May 28, 2020, from the tenant which she said was of the rental unit after she cleaned it prior to moving out.

The tenant explained further that when she returned to the rental unit to collect her personal property, there was a notice of entry on the door, for June 4, 2020. She returned to the rental unit on that date and time in anticipation of a move-out inspection, but the agent did not appear.

The tenant said that the landlord and tenant did not do the move-in inspection at the start of the tenancy, as she was instructed to come to the office to sign the document.

The tenant said that she cleaned the rental unit, vacuumed the carpet, although the carpet was old and dirty when the tenancy began.

Landlord's response –

Landlord's agent, MM, said there had been some back and forth conversations with the tenant, who said she was leaving anyway and that he instructed her to put her notice to vacate in writing.

Landlord's agent, CH, confirmed that she did not do the move-in inspection together with the tenant; instead, she filled out the form and gave it to the tenant to go over any areas of concern in the rental unit.

As to the situation with the alleged occupants of the rental unit, which prompted the letter, CH said she was looking for a tenancy agreement proving they lived elsewhere, which was never supplied.

Tenant's application –

The tenant applied for a return of her security deposit on June 29, 2020, as the landlord continues to hold that security deposit.

The tenant said she vacated the rental unit by 1:00 p.m., June 1, 2020, by the terms of their mutual agreement. The tenant stated that she gave her forwarding address to agent CH verbally and in a text message.

The tenant submitted that she provided a formal written forwarding address on June 6, 2020, at 12:46 p.m., by dropping it in the mail slot at the office at the residential property.

Landlord's response-

Agent CH agreed that she received the tenant's written forwarding address, but not on June 6. In response to my inquiry for a specific date, CH said it was after June 6.

Analysis

Landlord's application –

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.

Loss of rent, June –

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term, or here, 12 months from the date the tenancy started.

In this case, the tenant testified that she vacated the rental unit by 1:00 p.m. on June 1, 2020, which I interpret to mean she was occupying the rental unit on the first day of the month. As a result, under the terms of the tenancy agreement and section 26 of the Act, I find the tenant owed the monthly rent for June 2020.

I therefore find the landlord has established a monetary claim of \$1,625 for the monthly rent for June 2020.

Lease break fee –

Tenancy Policy Guideline 4 states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

In this case, I accept that the tenant has breached the tenancy agreement by vacating the rental unit prior to the 12 month fixed term.

In most circumstances, the landlord would therefore be entitled to the lease break fee.

In this case, however, I reviewed the tenant's evidence. The question for me is whether the landlord has ended the tenancy by their actions.

I have reviewed the letter given to the tenant by landlord's agent, CH. Given that landlords were not allowed to serve tenants with any type Notice to end a tenancy in May 2020, it appears to me that the landlord was attempting to circumvent the restrictions in place at that time by the Ministerial Order M089 of March 30, 2020, put in place due to the COVID-19 pandemic. I found the language in the letter to the tenant was very forceful, enough so that the tenant was being misled and misinformed by the landlord's factually and legally incorrect language.

The tenant provided the landlord's agent with a letter from a social worker, which I found to be compelling. The social worker specifically stated that the youth and his father did not live in the rental unit, yet the landlord's agent elected not to accept the tenant's proof. I, however, found the social worker's letter convincing.

The question is whether the landlord has ended the tenancy by their actions.

Overall, I find the evidence shows the landlord's clear intent was to evict the tenant during the time when notices to end a tenancy for cause were not being allowed.

As the tenant asserted there were no additional occupants and the landlord failed to accept her evidence supporting her assertion, I find it clear on a balance of probabilities

the tenant had the right to rely on the letter from the landlord's agent that her tenancy was ending immediately, within 2 days.

I therefore dismiss the landlord's claim of \$500 for a lease break fee.

Cleaning/repair –

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I find the landlord failed to comply with their obligations under the Act when the agent did not inspect the rental unit together with the tenant at the beginning of the tenancy. The agent inspected the rental unit alone and asked the tenant to do the same.

An inspection and an inspection report are important as they allow both the landlord and the tenant to comment on the condition of the rental unit when they inspect the rental unit together. Without the CIR being completed as required under the Act, I find I could not assess the condition at the end of the tenancy compared with the beginning of the tenancy.

Additionally, the landlord only provided undated, up-close photos of the alleged damage to the building elements in the rental unit at the end of the tenancy.

In reviewing the listing of the breakdown of this claim and the tenant's move-out video of the rental unit, I find that this evidence substantiates that the tenant left the rental unit reasonably clean. For instance, the landlord asked for \$20 to clean the refrigerator, \$20 to clean the stove, \$65 to clean the inside and outside of the cupboards, and \$75 to clean the tub, toilet, cabinet, and mirror. I find this shows the tenant left the rental unit reasonably clean as required and that the small clean-up was the landlord readying the rental unit for the next tenant.

For these reasons, I **dismiss** the landlord's claim for cleaning the refrigerator, stove, cupboards, bathroom fixtures, light fixtures, walls, ceilings, and floors.

As to the landlord's claim for cleaning the window track, I have reviewed the landlord's photographs. I do not accept that the build-up in the corner of the window tracks would accumulate to that extent in a tenancy of less than a month and a half. I did not see a picture from the landlord at the beginning of the tenancy to prove that it was clean at that time.

I therefore **dismiss** the landlord's claim of \$120 for window and window track cleaning.

As to garbage removal and outside clean-up, I accept the landlord's evidence that they had to remove some items of personal property left by the tenant. I therefore **approve** their claim of \$100 for these two items.

As to the landlord's claim for carpet cleaning, I accept that there was a stain on the carpet, as depicted by the landlord's photograph and the tenant's move-out video.

The tenant said she cleaned the carpet before moving out, but that it was old and dirty. The landlord failed to mark this place on the condition inspection report in the presence of the tenant, as required, and there was not a picture of this spot of the carpet from the beginning of the tenancy.

For these reasons, I find the landlord submitted insufficient evidence to show the tenant caused the stain and I **dismiss** their claim for carpet cleaning.

As to the landlord's claim for stove bowls replacement, I find the landlord submitted insufficient evidence to support that the bowls required replacing or the age of the bowls. The landlord did not provide a picture of the condition of the stove top, either at the beginning or end of the tenancy. I **dismiss** the landlord's claim for stove bowls replacement, due to the insufficient evidence.

As to the claim for a window screen repair, I find the landlord submitted insufficient evidence to support the claim. The landlord did not provide a picture of the condition of the window screen at the beginning of the tenancy. I **dismiss** the landlord's claim for window screen repair, due to the insufficient evidence.

As the landlord's application was partially successful, I grant the landlord recovery of their filing fee of \$100.

Tenant's application-

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit or file an application for dispute resolution claiming against the security deposit.

In the case before me, the evidence shows that the tenancy ended by June 1, 2020.

The tenant gave evidence that her written forwarding address was provided in proper form on June 6, 2020, through the landlord's mail slot. The agent said she received the written forwarding address, but after June 6, without providing a specific date.

Under section 90 of the Act, a document served by leaving it in the mail slot is deemed received on the third day.

Absence evidence to the contrary, I find the tenant's written forwarding address was deemed received by the landlord on June 9, 2020,

Therefore, the landlord had until June 24, 2020, to file an application for dispute resolution claiming against the tenant's security deposit or to return the deposit in full; however, the landlord did not file their application for dispute resolution until July 8, 2020.

Section 38(6) of the *Act* states that if a landlord fails to comply or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

I approve the tenant's claim for a return of her security deposit of \$812.50 and that the security deposit must be doubled.

I find the tenant has established a total monetary claim of \$1,625.00

Conclusion***Both applications-***

I have found that both applications had merit; however, the landlord has established a greater monetary claim. Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit, which was doubled, in partial satisfaction for their monetary award.

Calculation for monetary award for landlord -

June 2020 rent	\$1,625.00
Garbage removal and outside clean-up	\$100.00
Filing fee for the cost of this application	\$100.00
Tenant's security deposit, doubled	-\$1,625.00
Total Monetary Award to landlord	\$200.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order to be enforceable. 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.

The tenant is cautioned that costs of enforcement are subject to recovery from the tenant.

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: November 12, 2020

Residential Tenancy Branch