



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RELIANCE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceedings package via email on June 11, 2022. She sent the tenant the package a second time via email on January 20, 2022. The landlord testified that she had the tenant’s written consent to serve him with the Notice of Dispute Resolution Proceedings package via email and points to an email dated March 31, 2022 at 12:42:20 from the tenant indicating “email works” for receiving those documents. I find the tenant sufficiently served with the Notice of Dispute Resolution Proceedings package on June 14, 2022, the third day after it was sent via email in accordance with section 71 of the Act and section 44 of the Regulations.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”), this hearing was conducted in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to the monetary order she seeks?

Can the landlord recover the filing fee?

Can the landlord retain the tenant’s security deposit?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on March 1, 2021 with rent set at \$3,300.00 per month, payable on the first day of each month. A security deposit of \$1,650.00 was collected and the landlord continues to hold it. A pet damage deposit was also collected but returned to the tenant after the tenant’s pet died.

The parties also signed separate agreements for parking at \$175.00 per month and a storage locker at \$25.00 per month. Both were provided as evidence. The landlord testified that there are clauses in those agreements indicating the agreement may be cancelled with one month’s written notice of their intention to terminate the agreement.

On March 3, 2022, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities for unpaid March rent and the tenant disputed it. A hearing was set for June, however the tenant moved out on March 30th and sent the landlord and email notifying the landlord that he left. The tenant did not attend the hearing in June. The file number for the other dispute is recorded on the cover page of this decision.

The landlord seeks payment of March’s rent as well as payment of rent for the month of April as the tenant did not provide a month’s notice of his intention to end the tenancy. For the same reasons, the landlord seeks to recover payment for the parking and storage fees for both March and April. The landlord also seeks late payment fees for both months pursuant to clause 10 of the tenancy agreement.

The tenant did not provide a forwarding address when he notified the landlord of vacating the rental unit on March 30th. The landlord performed the move-out condition inspection report without the tenant and sent him a copy of it via email. On the condition inspection report, the landlord noted the unit requires painting at \$350.00 and cleaning at \$250.00. The landlord testified that the unit was dirty at the end of the tenancy and that the tenant had used the unit for AirBnB, creating excessive damage to the walls of the unit requiring touch up paint.

Analysis

Residential Tenancy Branch Policy Guideline 3 [Claims for Rent and Damages for Loss of Rent] states at part E:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the *RTA* (section 48(1.1) of the *MHPTA*).

I accept that the landlord had served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, on March 3rd and I note that the tenant had disputed the notice. I find that when the tenant ended the tenancy on March 30th by moving out, the tenancy was still active. I find the tenant was obligated to pay rent for the month of March pursuant to section 26 of the Act and I award the landlord rent in the amount of **\$3,300.00**.

Further, I find that the tenant ended on March 30, 2022 when the tenant vacated or abandoned the unit pursuant to section 44(1)(d). The tenant did not provide the landlord with a notice to end tenancy in accordance with section 45(1) of the Act, with an effective date not earlier than one month after the date the landlord received the notice. I find the tenant breached section 45(1) of the Act, and caused the landlord to be unable to re-rent the unit for the month of April and I award the landlord the equivalent of a further month's rent in the amount of **\$3,300.00**

Section 7(1)(d) of the Residential Tenancy Regulations allows a landlord to collect an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. I have reviewed the tenant ledger submitted as evidence by the landlord and I find the landlord incurred a single NSF fee of \$40.00 and I grant the landlord the maximum allowable under the regulations, **\$25.00**.

I have reviewed the parking agreement and the storage agreement signed by the tenant and I find that the tenant breached both those agreements by failing to give the landlord a month's written notice of his intention to terminate them. I find the landlord has established a loss of income from the parking stall and the storage locker for the months of March and April 2022 and I award the landlord $\$175.00 \times 2$ plus $\$25.00 \times 2 =$ **\$400.00** as compensation pursuant to section 67 of the Act.

Based on the landlord's undisputed testimony and the condition inspection report submitted as evidence, I find the unit had suffered damage to the paint beyond reasonable wear and tear. I accept the landlord's invoice from the painting company in

the amount of **\$367.50** as a reasonable expense that the landlord paid to perform the work and I award that amount to the landlord.

The landlord testified that the unit was unclean at the end of the tenancy. The condition inspection report indicates generally “C” throughout the document, which I understand means “needs cleaning”. The landlord did not provide any photographs of the unit at the end of the tenancy or an invoice to corroborate the claim for cleaning. I find insufficient evidence was provided by the landlord to satisfy me the claim for cleaning and I dismiss this portion of the landlord’s claim.

As the landlord’s application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with the offsetting provision of section 72 of the Act, the landlord may retain the tenant’s security deposit in the amount of \$1,650.00.

Item	Amount
March 2022 rent	\$3,300.00
April 2022 rent	\$3,300.00
NSF fee	\$25.00
Parking and storage for March and April 2022	\$400.00
Painting	\$367.50
Filing fee	\$100.00
Less security deposit	(\$1,650.00)
Total	\$5,842.50

Conclusion

I award the landlord a monetary order in the amount of **\$5,842.50**.

The tenant must be served with this Order. 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.

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: February 07, 2023