



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RP
 MNR-DR, MNDL, MNDCL, FFL
 CNR-MT, RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s first Application for Dispute Resolution was made on February 6, 2023. The Tenant applied to cancel a One Month Notice to End Tenancy for cause dated January 31, 2023, and for an order to repair the rental unit.

The Tenant’s second Application for Dispute Resolution was made on February 24, 2023. The Tenant applied to cancel a 10-Day Notice to End Tenancy for unpaid rent dated February 8, 2023, and for an order to repair the rental unit.

The Landlord’s Application for Dispute Resolution was made on March 3, 2023. The Landlord applied to enforce a 10-Day Notice to End Tenancy for Unpaid Rent, dated February 8, 2023, for a monetary order for unpaid rent, and to recover the filing fee paid for their application.

The Landlord filed an amendment to their Application for Dispute Resolution on May 8, 2023, requesting to add an additional claim for a monetary order for damages and losses due to the tenancy.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to

present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues – *Issues*

At the outset of these proceedings, both parties agreed that the tenancy ended due to a settlement agreement reached between these parties in a previous hearing with the Residential Tenancy Branch, file number recorded on the style of cause page for this decision. Both parties agreed that the Tenant vacated the rental unit on April 25, 2023.

I accept the agreed-upon testimony of these parties, that this tenancy ends on April 25, 2023. As this tenancy has already ended, I find that there is no need for a decision on the issues of whether the Notices before me in these proceedings should be cancelled or enforced, nor a need for a decision on the requested repair order for this tenancy.

Therefore, I dismiss the Landlord's claim to enforce a 10-Day Notice to End Tenancy for Unpaid Rent, dated February 8, 2023. I also dismiss the Tenant's claims to cancel a One-Month Notice to End Tenancy for cause dated January 31, 2023, to cancel a 10-Day Notice to End Tenancy for unpaid rent dated February 8, 2023, and for an order to repair to the unit.

I will continue in these proceedings on the remaining issues contained in the Landlord's application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages and losses due to the tenancy?
- Is the Landlord entitled to recover the filing fee paid for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on June 1, 2020, as a two-year fixed-term tenancy that rolled into a month-to-month at the end of the fixed term. Rent in the amount of \$1,800.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$900.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that no written move-in inspection was completed for this tenancy and that one rent increase was issued by the Landlord, increasing the rent to \$1,827.00 as of June 2022. The Landlord submitted a copy of the rent increase form into documentary evidence.

The parties agreed that they had a previous hearing with the Residential Tenancy Branch, on April 19, 2023. During which a settlement agreement was reached between the Landlord and the Tenant to an end-of-tenancy date of April 24, 2023.

The parties agreed that the Tenant moved out one day late on April 25, 2023, and that the Landlord paid the Tenant the full financial settlement agreed to in the settlement decision dated April 19, 2023. The Landlord submitted a copy of the settlement decision and the move-out inspection report into documentary evidence.

The Landlord testified that when they contact the Tenant to confirm that they were moving out in accordance with the settlement agreement, the Tenant told them that they were very busy and had not been able to arrange for their move. The Landlord testified that they wanted to get possession of their rental unit back, so they offered to assist the Tenant with their move by arranging for a mover, to which the Tenant agreed. The Landlord submitted that they are seeking to recover their costs for moving the Tenant, consisting of \$1,323.00 for a mover, 250.00 for junk removal, and \$630.00 in cleaning costs. The Landlord submitted three receipts into documentary evidence for the mover, the junk removal, and the cleaning.

The Tenant agreed that they were not ready to move out of the rental unit and that the Landlord did hire a mover to pack them up and move them to their new accommodations.

The Landlord testified that the tenant returned the rental unit to them with damaged walls and that they are requesting \$4500.00 to have the walls repainted. The Landlord also submitted an email into documentary evidence as evidence for the estimated costs for painting.

The Landlord testified when asked, that the paint in the rental unit had been three years old at the end of this tenancy.

The Tenant also agreed that the rental unit was returned uncleaned and in a state of disrepair at the end of the tenancy but that they should not be responsible to repaint the entire rental unit for the Landlord. The Tenant submitted that they were just too busy to take care of this themselves at the end of the tenancy.

The parties agreed that one of the entry access fobs and one of the keys for this tenancy were not returned to the Landlord at the end of this tenancy. The Tenant agreed that they owe the Landlord \$170.00 to replace one fob and one key for this tenancy.

Both the Tenant and the Landlord agreed that the rent for February 2023, in the amount of \$1,827.00 and the rent between April 1st to 25th 2023, in the amount of \$1,522.50, had not been paid for this tenancy.

The Landlord testified that during the move-out inspection, it was noted that a few items were missing from the bathroom including a showerhead, a toilet paper holder, and a mirror. The Landlord is requesting \$150.00 in replacement costs for the missing items. The Landlord submitted a move-out inspection report and 12 pages of pictures into documentary evidence.

The Tenant testified that there were no items missing from the bathroom at the end of their tenancy. The Tenant submitted that the mirror was in the rental unit, just in a different room, that there was never a toilet paper dispenser in that bathroom and that the shower head was removed by the movers the Landlord hired, and that the Tenant found it in their items when they were unpacking and would be happy to return it to the Landlord.

The Landlord testified that the patio door and lock were damaged at the end of this tenancy and that it will cost them \$1,500.00 to have it repaired. The Landlord submitted an email from the strata into documentary evidence.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that this tenancy ended on April 25, 2023, the day the Tenant moved out of the rental unit, one day after the date that they had been ordered to vacate the unit in the settlement agreement order issued by the Residential Tenancy Branch dated April 19, 2023. I find that the Tenant was in breach of an order of the Residential Tenancy Branch when they failed to move out of the rental unit on April 24, 2023, as ordered.

I accept the testimony of the Landlord that they did not conduct a move-in inspection for this tenancy. Section 23 of the Act states the following regarding the move-in inspection:

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.

I find that the Landlords breached section 23 of the *Act* when they did not conduct a move-in inspection with the Tenant at the beginning of this tenancy as required. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

23 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the Landlord breached section 23 of the *Act* by not completing the required move-in inspection of the rental unit, I find that the Landlord has extinguished her right to make a claim against the security deposit for damage to the residential property. However, I find that part of the Landlord's application is to recover outstanding rent for the rental unit and therefore, the Landlord does have a right to claim against the security deposit for unpaid rent, in this case.

The Landlord was cautioned during these proceedings, regarding the requirements under the *Act* to ensure that a written move-in and move-out inspection is completed for all tenancies.

The Landlord has claimed for several items totalling \$11,872.50 in compensation for damages and losses due to this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the

party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord has requested compensation to recover the unpaid rent for this tenancy in the amount of \$3,349.50 for February 2023, and April 2023. I accept the agreed-upon testimony of these parties that the Tenant did not pay the rent for February and April 2023 as required by their tenancy agreement. Section 26 of the *Act* states the following:

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.

I find that the Tenant breached of section 26 of the *Act* when they did not pay the rent for this tenancy in accordance with the tenancy agreement and that this breach resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the outstanding rent for the months of February and April 2023. I award the Landlord the recovery of the **\$3,349.50 in outstanding rent** for this period. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

As for the Landlord's claims to recover their cost for moving the Tenant out of the rental unit at the end of tenancy, consisting of \$1,323.00 for a mover, 250.00 for junk removal, and \$630.00 in cleaning. I accept the agreed-upon testimony that the Landlord did have to assist the Tenant in their move to their new accommodations at the end of this tenancy and that the Landlord had cleaned the rental unit at the end of this tenancy.

Section 37(2) of the *Act* states the following regarding the conditional of the rental unit at the end of a tenancy:

Leaving the rental unit at the end of a tenancy

37 (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.

As stated above, it has already been determined that the Tenant was in breach of an order from the Residential Tenancy Branch when they failed to move out of the rental unit on April 24, 2023. Additionally, after reviewing the Landlord's documentary evidence, I find that the Tenant was also in breach of section 37 of the *Act* when they return this rental unit to the Landlord unclean state at the end of this tenancy.

I have reviewed the invoices submitted into evidence by the Landlord, and I find that the Landlord has provided sufficient evidence to prove the value of their cost to move the Tenant out of the rental unit with all of their personal belongings and to have the rental unit cleaned at the end of this tenancy. Therefore, I find that the Landlord has established an entitlement to the recovery of their cost for moving the Tenant and cleaning the rental unit at the end of this tenancy, in the amounts of **\$1,323.00 for a mover, 250.00 for junk removal, \$630.00 in cleaning.**

As for the Landlords' request for estimated costs for wall painting in the amount of \$4,500.00 and patio door and lock repair in the amount of \$1,500.00. I have reviewed the Landlord's documentary evidence, and I find that the Tenant was in breach of section 37 of the *Act* when they return this rental unit to the Landlord in a damaged state at the end of this tenancy.

I have also reviewed the emails that the Landlord submitted to support their requested loss amounts, and I find that these emails are insufficient evidence to prove the value of the requested cost for wall painting and patio door and lock repair. Consequently, I dismiss this portion of the Landlord's claim with leave to reapply.

Additionally, the Landlord has also requested \$150.00 to replace a missing mirror and a missing toilet paper dispenser. However, the parties, in this case, offered conflicting verbal testimony regarding these items. In cases where two parties to a dispute provide

equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlord who filed this claim, the Landlord holds the burden to prove this claim over and above their testimony.

An Arbitrator normally looks to the **move-in**/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, as it has already been determined that this document was not completed in accordance with the *Act*, I am unable to rely on this document in my determination of this portion of the Landlord’s claim.

After reviewing the landlord's documentary evidence, I find that there is insufficient evidence to outweigh the contradictory testimony I received during these proceedings on this point of the Landlord's claim. As there is a lack of evidence to support this portion of the Landlord's claim, I dismiss the Landlord's claim for \$150.00 to replace a missing mirror and toilet paper dispenser.

Although, during the hearing, the Tenant did agree that they do have the Landlord's showerhead, as it was accidentally packed with their belongings. Therefore, I order the Tenant to return the Landlord's showerhead to the Landlord no later than June 30, 2023.

These parties agreed during these proceedings, that the Tenant owes the Landlord \$170.00 to replace a missing key and fob for the rental unit that was not returned at the end of this tenancy. Therefore, I award the Landlord this agreed to amount of **\$170.00**.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the **\$100.00** filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary award in the amount of \$4,922.20; consisting of \$3,349.20 in unpaid rent, \$1,323.00 for movers, \$250.00 for junk removal, \$630.00 for cleaning, \$170.00 to replace a key and \$100.00 in the recovery of the filing fee for this hearing, less \$900.00 in the security deposit they are holding for this tenancy.

Conclusion

I order the Tenant to return the Landlord's showerhead to the Landlord no later than June 30, 2023.

I grant permission to the Landlord to retain the security deposit of this tenancy in partial satisfaction of the awards contained in this decision.

I grant the Landlord a **Monetary Order** in the amount of **\$4,922.50** pursuant to sections 67 and 72 of the *Act*. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. 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: June 15, 2023

Residential Tenancy Branch