



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 dealt with applications from the Landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The Landlord applied for:

- A Monetary Order for unpaid rent pursuant to Section 67;
- A Monetary Order for loss or damages pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38; and
- Authorization to recover the filing fee for this application pursuant to Section 72.

An agent appeared for the Landlord (the *Landlord*). The Tenant GG appeared for the Tenants (the *Tenants*). As the Tenants acknowledged receipt of the Notice of Hearing and the Landlord's evidentiary documents, I find the Tenants are sufficiently served pursuant to Section 71(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to the following:

- A Monetary Order for unpaid rent pursuant to Section 67;
- A Monetary Order for loss or damages pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38; and
- Authorization to recover the filing fee for this application from the Tenants pursuant to Section 72?

Background and Evidence

A copy of the lease was submitted as evidence. The parties entered into a written fixed term residential tenancy agreement for one year beginning October 31, 2016 and ending when the Tenants moved out on October 2, 2017. Rent of \$2,800 was payable on the first of the month.

The Landlord requested a Monetary Order in the amount of \$824.70 for rent, damages and the filing fee, less the security deposit held by the Landlord of \$724.70, leaving a balance owing by the Tenants of \$100.00.

A summary of the Landlord's claim follows:

Outstanding rent	\$186.00
Damage to premises (cleaning and repairs)	\$538.70
Filing fee	\$100.00
Total Claimed by the Landlord	\$824.70
<i>Less Security Deposit held by Landlord</i>	<i>(\$724.70)</i>
Monetary Order Claimed by Landlord	\$100.00

Landlord's Claim for Outstanding Rent

The parties agree the Tenants vacated the premises on October 2, 2017 and did not pay rent for October 1 and 2. The Landlord claims a monetary order of \$186.00 being a prorated calculation based on the monthly rent.

The Tenants claim there was an implied agreement they could occupy the premises for the 2-day period at no cost. They testified the Landlord was returning to the country early and the Tenants agreed to end the fixed term tenancy one month before the end of the tenancy in return for no rent for 2 days.

The Tenants submitted no supporting evidence this was an agreement between the parties. The Landlord denied any such agreement existed.

Security Deposit

The Tenants provided a security deposit of \$1,400.00. The Landlord returned \$675.30 to the Tenants and retained the balance of \$724.70 for damages and outstanding rent. The Landlord did not make an application to retain the security deposit within 15 days as required by Section 38(1) of the Act.

The parties agree the Tenants provided their forwarding address in writing to the Landlord at the time they vacated the premises. The Tenants did not authorize the Landlord to retain any portion of their deposit.

The Landlord continues to hold the balance of the security deposit as follows:

Security deposit	\$1,400.00
Returned to Tenants	(\$675.30)
Balance of Security Deposit retained by Landlord	\$724.70

Landlord's Claim for Damages (Repairs and Cleaning)

The Landlord claims the following expenses for cleaning and repairs for which supporting receipts were submitted as evidence:

Cleaning fees	\$13.70
Repair costs	\$525.00
Total	\$538.70

Cleaning Costs

At the beginning of the tenancy, the Tenants paid a "move-out cleaning fee" of \$295.00. The lease contained a provision the Tenants would reimburse the Landlord for any cleaning fee over this amount. The Landlord submitted an invoice in support of the claim of cleaning costs of \$308.70

The Tenants objected to the sum of \$13.70 being charged for cleaning in addition to the fee of \$295.00 which they already paid. The tenants submitted no evidence in support of their claim the cleaning costs were excessive.

Damages and Repairs Costs

The parties completed a condition inspection report on move-in and move-out which was submitted as evidence. The Tenants' agent attended the inspection on move-out but the Landlord claimed the agent refused to sign because of the damage noted.

The Landlord submitted photographs of the damage to the premises including holes in the walls, scuffed and damaged drywall, and damaged trim. The tenants also submitted an invoice for the repairs.

The Tenants claim the repair costs are unreasonable. They state the damage to the premises was no more than normal wear and tear, except for some holes in the wall, which could have been repaired at a substantially lower cost. The Tenants submitted no evidence in support of their estimate a more reasonable invoice for repairs would be \$300.00.

Analysis

Landlord's Claim for Rent - Overholding rent

Section 57(1) of the *Act* defines an 'overholding tenant' as a Tenant who continues to occupy a rental unit after the tenancy is ended.

Section 57(3) states:

A Landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The Tenants have submitted no evidence there was an agreement they would not pay rent for the period in which they were overholding Tenants. I therefore accept the Landlord's evidence and find the Landlord is entitled to an order in the amount of \$186.00 being the amount claimed for unpaid rent for two days.

Monetary Order – Damages

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other party.

To claim for damage or loss under the *Act*, the party claiming bears the burden of proof. The claimant must prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove entitlement to a monetary award.

Section 37(2) of the *Act* requires when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline # 1, Landlord & Tenant – Responsibility for Residential Premises states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard [reasonable health, cleanliness and sanitary standards].

The Landlord has applied for reimbursement of cleaning expenses for \$13.70 over the move-out cleaning costs and submitted an invoice from a cleaner in that amount. The Tenant does not object to the cleaning fees of \$295.00 but only the amount in excess.

The Landlord has applied for reimbursement of repair expenses for \$525.00 and submitted an invoice from a repair person in that amount as well as photographic evidence.

I accept the Landlord's evidence the cleaning and repairs were necessary and the expenses are reasonable in the circumstances. I find the Landlord is entitled to an order for reimbursement for the cleaning and repair expenses in the amount claimed.

Security Deposit

Section 38 of the *Act* requires the Landlord to either return the Tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or receipt of the Tenants' forwarding address in writing.

If that does not occur, the Landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

This provision does not apply if the Landlord has obtained the Tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a). I find the Landlord has not brought proceedings with respect to nonpayment of rent nor an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit within 15 days pursuant to section 38(1) of the *Act*.

I accept the parties' evidence the Tenants have not waived their right to obtain a payment pursuant to section 38 of the *Act* and the Landlord was given written notice of a forwarding address.

Under these circumstances and in accordance with Sections 38(6) and 72 of the *Act*, I find that the Tenants are entitled to return of the security deposit in the amount of \$2,800.00. No interest is payable over this period.

I find the Landlord is not entitled to reimbursement of the filing fee.

In summary, I find the Landlord must pay to the Tenants the sum of **\$1,400.00** calculated as follows

Tenants - security deposit	\$2,800.00
Less award to Landlord - rent, damages and cleaning	(\$724.70)
Less security deposit already returned	(\$675.30)
Monetary Order – Landlord to pay Tenants	\$1,400.00

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,400.00. This Order must be served on the Landlord. If the Landlord fails to comply with this Order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 25, 2018

Residential Tenancy Branch