



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTERA PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 10, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation for cleaning and painting pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for carpet cleaning pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

K.K. attended the hearing on behalf of the Landlord; however, the Tenant did not attend the hearing. K.K. provided a solemn affirmation.

K.K. advised that she served the Tenant the Notice of Hearing package and evidence by registered mail on June 15, 2018. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package and evidence.

K.K. was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for cleaning and painting?
- Is the Landlord entitled to a Monetary Order for carpet cleaning?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

K.K. stated that the tenancy started on September 1, 2017 as a fixed term tenancy for a period of one year, and she advised that the Tenant vacated the rental unit on May 31, 2018. Rent was established at \$1,235.00 per month due on the first of each month. A security deposit of \$617.50 was also paid.

K.K. advised that a move-in and a move-out inspection report was conducted by both parties and that the Tenant signed the move-out inspection on May 31, 2018; however, he disagreed with the condition of the premises. The Tenant provided a forwarding address in writing on the bottom of the move-out inspection report.

K.K. stated that she was seeking a monetary award in the amount of **\$445.00** as the Tenant smoked in the rental unit contrary to his tenancy agreement. She stated that the rental unit needed to be washed, cleaned, and entirely repainted to mask the smell and stains due to marijuana smoke. She submitted an invoice as evidence outlining the required repairs done to rectify the issues in the rental unit.

K.K. also stated that she was seeking a **\$102.90** carpet cleaning fee as per the tenancy agreement. She submitted an invoice as evidence outlining the required carpet cleaning cost to rectify this issue in the rental unit.

K.K. advised that she estimated the costs to bring the rental unit back to a re-rentable condition as \$400 for cleaning and repainting, and \$105.00 for carpet cleaning. She stated that on June 4, 2018, she deducted these amounts from the Tenant's security deposit and mailed cheque # 272, in the amount of \$112.50, to the Tenant's forwarding address. However, she stated that she did not have written consent from the Tenant to deduct any amounts from the security deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with

section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the Act.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

~~The undisputed evidence is that the forwarding address in writing was provided on May 31, 2018 when the Tenant vacated the rental unit, and that K.K. made her Application within the 15-day frame. However, I find it important to note that Section 38 of the Act clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the Act which allows the Landlord to retain a portion of the deposit without the Tenant's written consent and then make a claim against the balance.~~

The undisputed evidence is that the forwarding address in writing was provided on May 31, 2018 when the Tenant vacated the rental unit, that the Landlord returned \$112.50 to the Tenant on June 4, 2018, and that K.K. made her Application within the 15-day frame to claim against the balance. As K.K. returned a portion of the deposit and claimed against the balance within the 15-day time frame pursuant to Section 38 of the Act, I am satisfied that K.K. complied with the requirements of this Section and the doubling provisions under the Act do not apply in this instance.

~~As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the Act, and did not comply with the requirements of Section 38, I find that the Tenant is granted a monetary award amounting to double the original security deposit. Under these provisions, I am awarding the Tenant \$1,235.00; however, as the Tenant has received a cheque in the amount of \$112.50, I am reducing this monetary award to \$1,122.50. As such, I grant the Tenant a monetary award in the amount of \$1,122.50.~~

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Based on the undisputed evidence before me, I am satisfied by K.K.'s testimony and evidentiary submissions that she has established a claim for a monetary award amounting to **\$547.90** for cleaning and repainting of the rental, and for carpet cleaning. However, as K.K. returned \$112.50 on June 4, 2018, she overcompensated the Tenant as her actual costs exceeded the amount she held back. Therefore, due to this overpayment, the Tenant owes the Landlord the difference, as outlined in the table below.

As K.K. was successful in her claims, I find that the Landlord is entitled to the \$100.00 filing fee paid for this application. ~~Under the offsetting provisions of Section 72 of the Act, I allow the Landlord to retain a portion of the Tenant's monetary award in satisfaction of the debts outstanding.~~

~~Pursuant to Sections 67 and 72 of the Act, I grant the Tenant a Monetary Order as follows:~~

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of security deposit less the returned portion	\$1,122.50
Cleaning and repainting	-\$445.00
Carpet cleaning	-\$102.90
Recovery of filing fee	-\$100.00
TOTAL MONETARY AWARD	\$474.60

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Total security deposit	\$617.50
Landlord's estimated cost for cleaning and repainting	-\$400.00
Landlord's estimated cost for carpet cleaning	-\$105.00
Total estimated cost for repairs	-\$505.00
Amount returned to Tenant	\$112.50
Landlord's actual cost for cleaning and repainting	-\$445.00
Landlord's actual cost for carpet cleaning	-\$102.90
Total actual cost for repairs	-\$547.90
Total estimated cost for repairs paid by Tenant (\$505.00) - Total actual cost for repairs owed by Tenant (\$547.90)	-\$42.90
Therefore, amount owed to Landlord due to overpayment	\$42.90
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$142.90

Conclusion

~~The Tenant is provided with a Monetary Order in the amount of **\$474.60** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 Landlord is provided with a Monetary Order in the amount of **\$142.90** 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: September 28, 2018

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON SEPTEMBER 28, 2018
AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.

Residential Tenancy Branch