



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY AND PROP. MAGT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On January 30, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 2, 2018 and April 6, 2018, the Landlord submitted an Amendment to the Application for Dispute Resolution to change the service address for the Tenant and seeking compensation for cleaning, damage, and repainting pursuant to Section 67 of the *Act*.

A.F. and W.L. attended the hearing as agents for the Landlord; however, the Tenant did not attend the hearing. A.F. and W.L. provided a solemn affirmation.

A.F. and W.L. advised that they served the Tenant the Notice of Hearing package and evidence by registered mail on February 1, 2018 (the registered mail tracking number is on the first page of this decision). In addition, A.F. and W.L. advised that they served the Amendments by registered mail. 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, evidence, and Amendments.

A.F. and W.L. were 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 unpaid rent?
- Is the Landlord entitled to a Monetary Order for cleaning?
- Is the Landlord entitled to a Monetary Order for damage and repainting?

- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

A.F. and W.L. stated that the tenancy started on June 2, 2017 and they advised that the Tenant vacated the rental unit in the middle of January 2018. Rent was established at \$1,650.00 per month, due on the first day of each month. A security deposit of \$825.00 was also paid.

A.F. and W.L. submitted that the Tenant had not paid January 2018 rent so a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was served to the Tenant on January 5, 2018 by posting to the Tenant's door. The Notice indicated that \$1,650.00 was outstanding on January 1, 2018 and the effective end date of the Notice was January 18, 2018. They advised that the Tenant texted and emailed them stating that he would vacate the rental unit in January 2018. They also stated that they received the Tenant's forwarding address in writing on January 24, 2018 via text.

A.F. and W.L. advised that a move-in inspection report was conducted by both parties and that the Tenant was provided two opportunities by text to attend a move-out inspection; however, the Tenant did not attend the move-out inspection. The inspection was conducted by the Landlord in the Tenant's absence on January 17, 2018 after the Tenant had vacated the rental unit.

A.F. and W.L. stated that the Landlord was seeking a monetary award in the amount of **\$1,650.00** for January 2018 rent arrears.

In addition, A.F. and W.L. stated that the Landlord was seeking a monetary award in the amount of **\$91.88** for cleaning of the rental unit. They stated that three and a half hours, at \$25.00 per hour, were required for a cleaning company to bring the rental unit back to a re-rentable condition. They submitted an invoice as evidence outlining the required cleaning done to rectify the issues in the rental unit.

A.F. and W.L. stated that the Landlord was also seeking a monetary award in the amount of **\$367.50** for replacement of broken blinds and for repair and repainting of damage caused by the Tenant mounting a television to the wall. They submitted an invoice as evidence outlining the required repairs done to rectify the issues in the rental unit.

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*.

The undisputed evidence is that the forwarding address in writing was provided on January 24, 2018 after the Tenant vacated the rental unit, and that the Landlord made the Application within the 15-day frame. As such, I am satisfied that the Landlord complied with the requirements of the *Act* with respect to the security deposit.

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 A.F. and W.L.'s testimony and evidentiary submissions that they have established a claim for a monetary award amounting to **\$1,650.00** for January 2018 rent arrears. Furthermore, I am satisfied by their testimony and evidentiary submissions that they have established a claim for a monetary award amounting to **\$91.88** and **\$367.50** for cleaning, repairs, and repainting of the rental unit.

As A.F. and W.L. were successful in their 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 the security deposit in partial satisfaction of the debts outstanding.

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

January 2018 rent	\$1,650.00
Cleaning	\$91.88
Damage and repainting	\$367.50
Recovery of filing fee	\$100.00
Security deposit	-\$825.00
TOTAL MONETARY AWARD	\$1,384.38

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,384.38** 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 10, 2018

Residential Tenancy Branch