Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On June 13, 2018, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation for a loss suffered pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on September 6, 2018 and was subsequently adjourned to be heard on October 29, 2018 as there was not enough time to complete the hearing initially.

The Landlords attended the adjourned hearing. The Tenant attended the adjourned hearing as well, with D.H. attending as her advocate. All parties provided a solemn affirmation.

All parties acknowledged the evidence submitted and 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

- Are the Landlords entitled to a Monetary Order for rent arrears?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords stated that the tenancy started on January 18, 2018 the tenancy ended when the Tenant vacated the rental unit on June 2, 2018. Rent was established at $1,000.00 per month, due on the first day of each month. A security deposit of $500.00 and a pet damage deposit of $300.00 were also paid. A signed copy of the tenancy agreement was submitted into evidence.

Both parties agreed that the same rental unit was rented to another tenant on February 1, 2018 and that the rental unit became a shared tenancy in common. A signed copy of this tenancy agreement was submitted into evidence as well. They agreed that apart from this tenancy agreement, there was nothing in writing outlining the specific details of how the rental unit would be shared or indicating each tenant's individual responsibilities with respect to the rental unit; however, the Landlord stated that there was "clear communication" at the beginning of the tenancy surrounding these issues. Both parties agreed that the move-in inspection was to be completed after the Tenant painted the rental unit and a signed move-in inspection report was submitted into evidence dated March 11, 2018.

Both parties stated that they engaged in a previous Dispute Resolution hearing (the related file number is listed on the first page of this decision) that ended in a settlement agreement where two conditions of the agreement outlined that the tenancy would end on June 30, 2018 by mutual agreement, and that the Tenant will pay rent for May and June 2018. The Tenant stated that she sent an email to the Landlords on May 7, 2018 advising them that she would be moving out earlier, and she gave up vacant possession of the rental unit on May 26, 2018. The Tenant stated that she "did not properly understand" this settlement agreement, that it was her belief that the agreement allowed her to remain in the rental unit until June 30, 2018 "if needed", and that she did not realize that she would be responsible for June 2018 rent "no matter what".

The Landlords submitted that she knew the Tenant had vacated the rental unit on May 27, 2018 and she attempted to schedule a move-out inspection report with the Tenant on June 13, 2018 or June 18, 2018. However, there was conflicting testimony with

respect to the parties' attendance at the June 13, 2018 scheduled move-out inspection and with respect to the scheduling of a second opportunity to complete a move-out inspection on June 18, 2018.

Both parties agreed that a forwarding address in writing was provided by email on June 1, 2018.

The Landlords submitted that they were seeking rent arrears in the amount of **$1,000.00** for June 2018 rent as agreed upon according to the earlier referred to settlement agreement decision dated April 30, 2018.

The Landlords advised that they were seeking compensation in the amount of **$6.00** for the cost of a returned cheque which could not be cashed as there were insufficient funds in the account.

The Landlords stated that they were seeking compensation in the estimated amount of **$93.23** for the Tenant's share of the water bill for April, May, and June 2018. The Landlords stated that this bill was not available at the time of the hearing, so they were not able to submit a copy of the invoice. The Tenant advised that she was not presented with this bill; however, she acknowledged that she should be responsible for one third of this cost for April and May 2018.

The Landlords then advised that they were seeking compensation in the amount of **$52.00** for the cost of the Tenant's share of the June 2018's hydro bill. The Tenant submitted that she should not be responsible for this cost as she did not reside there in June 2018.

The Landlords stated that they were seeking compensation in the amount of **$80.00** for the cost to vacuum the carpets as they allege that the Tenant had three cats during the tenancy and she did not vacuum adequately to remove all the cat hair. The Landlords outlined that it took two them two hours on June 24, 2018 to vacuum the carpets at a cost of $40.00 per hour. She also submitted pictures as evidence of the condition of the rental unit to support her claims that vacuuming was not completed. The Tenant submitted pictures demonstrating that the carpet was vacuumed prior to her vacating the rental unit.

The Landlords then stated that they were seeking compensation in the amount of **$241.50** for the cost to shampoo the carpets at the end of the tenancy as she alleges that the Tenant did not shampoo the carpet. She submitted into evidence an invoice to

substantiate the cost of shampooing the carpet and to support that it was necessary due to “pet soils”. She referenced pictures submitted into evidence demonstrating the need to shampoo the carpets. The Tenant submitted that professional cleaning is not required for tenancies of less than a year. She also advised that the carpet was not shampooed prior to the commencement of her tenancy.

She submitted that they were seeking compensation in the amount of **$195.00** for the cost to clean the rental unit at the end of the tenancy as she alleges that the Tenant did not do so adequately. She outlined that she paid the other tenant $30.00 per hour and that it took her six and a half hours to clean the rental unit and rectify these issues. She submitted documentary evidence outlining the items that required cleaning and the duration to rectify these issues. The Landlords referred to pictures as evidence of the condition of the rental unit to support her claims. The Tenant submitted pictures demonstrating that she had cleaned the rental unit contrary to the Landlords’ claims. She emphasized that the dates of the Landlords’ cleaning were 10 days and 30 days after the Tenant vacated the rental unit and the other tenant still occupied the rental unit.

She advised that they were seeking compensation in the amount of **$120.92** for the cost to replace a curtain rod and blinds that she alleges the Tenant removed and did not replace at the end of the tenancy. The Landlords stated that the Tenant did not like the brand-new blinds, so she took them down and stored them in the garage where they were crushed. She referred to pictures submitted into evidence to corroborate this claim. The Tenant submitted that the other tenant disposed of these blinds; however, the Tenant retrieved these back and placed them in the garage for storage. She also advised that the curtain rod was stored in the hot water room at the end of the tenancy.

She stated that they were seeking compensation in the amount of **$27.99** for the cost to replace the missing blinds with curtains instead as it was a cheaper alternative. The Tenant stated that the Landlords purchased curtains as the Landlords would be selling the house and it was the cheapest alternative.

The Landlords advised that they were seeking compensation in the amount of **$10.00** for the cost of the dump fees associated with refuse left at the end of the tenancy. She stated that the municipality would not dispose of this cat refuse as the garbage bags were loose. The Landlords provided a receipt for this bill. The Tenant advised that the refuse was in bags that were tied up and should have been collected and disposed of by the municipality.

Finally, she requested that they were seeking compensation in the amount of **$865.09** for their costs associated with travelling to the rental unit to rectify all of the above issues with respect to the tenancy.

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 23 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlords also applied for utilities owing and issues which would not be considered solely damage claims, the Landlords still retain a right to claim against the security deposit.

Furthermore, when reviewing the evidence before me, the consistent evidence is that the parties agreed to conduct a move-in inspection report on March 11, 2018. As such, I am satisfied that this would be considered a mutually agreed upon date pursuant to Section 23 of the *Act*. Furthermore, the consistent evidence is that a new tenant did not occupy the rental unit after the Tenant gave up vacant possession, that the Landlord provided two opportunities to conduct a move-out inspection report, and that the Tenant was admittedly late for the first scheduled inspection and was unable to attend or have someone attend the second opportunity. As such, I am satisfied that the Landlords have not extinguished their right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords 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*. Furthermore, this Section requires that the Landlords only be allowed to claim against the pet damage deposit for damage caused by pets.

The undisputed evidence is that the forwarding address in writing was emailed to the Landlords on June 1, 2018. Furthermore, the Landlords made their Application within the 15-day frame to claim against the deposits. As the Landlords were entitled to claim against the security deposit still, and as they complied with Section 38 (1) of the *Act* by making a claim within 15 days, I find that they have complied with the requirements of the *Act* and therefore, the doubling provisions do not apply. Furthermore, as the Landlords claimed to keep the pet damage deposit and a portion of their claims pertain to alleged pet damage, I am satisfied that they were entitled to claim against this deposit as well and the doubling provisions do not apply in this instance either.

With respect to the Landlords' 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."

Regarding the Landlords' claim for the June 2018 rent, the undisputed evidence before me is that there was a settlement agreement between the parties. When I read this agreement, I do not find there to be any ambiguity in the agreed upon terms. Regardless of the Tenant's statement that she "did not properly understand" this agreement, I am satisfied that the parties clearly agreed that the tenancy would end on June 30, 2018 and that the Tenant would be responsible for paying June 2018 rent. While she elected to vacate the rental unit earlier than June 30, 2018 on her own volition, I am satisfied that she is still responsible for paying June 2018 rent as per the terms that she agreed to on April 30, 2018. As such, I am satisfied that the Landlords have substantiated a claim for outstanding rent, and I grant the Landlords a monetary award in the amount of **$1,000.00.**

With respect to the Landlords' claim for the insufficient funds fee, I find it important to note that Section 7 of the Residential Tenancy Regulations states that the Landlords may charge a non-refundable service fee charged by a financial institution for the return of the Tenant's cheque as long as this is outlined in the tenancy agreement. As the tenancy agreement submitted into evidence lists a "Post dated cheques & NSF" fee of $50.00, I am satisfied that the Landlords have complied with the regulations with respect to this fee and as such, I grant the Landlords a monetary award in the amount of **$6.00.**

With respect to the Landlords' claim for the share of the water bill for April, May, and June 2018, the Landlords indicated that they did not submit any documentary evidence related to the actual cost of this claim. Even though the Tenant acknowledged that she should be responsible for one third of this cost for April and May 2018, as the burden of proof is on the Landlords to establish exactly how much is owed, I am not satisfied that a calculation for this amount can be determined. As the Landlords have not met the onus to establish their claim on this point, I dismiss this particular claim in its entirety.

With respect to the Landlords' claim for the Tenant's share of the June 2018 hydro bill, as the undisputed evidence is that the Tenant did not occupy the rental unit for this period of time, I am not satisfied that the Tenant should be responsible for this cost. As such, I dismiss this particular claim in its entirety as well.

With respect to the Landlords' claim for compensation in the amount of $80.00 for the cost to vacuum the carpets, I will address this with the Landlords' claim for compensation in the amount of $195.00 for the cost to clean the rental unit, as these issues are inter-related. Complicating this matter though is that both tenants lived in the same rental unit, but had their own, separate tenancy agreements, which is also known as tenants in common. I do not find there to be any evidence before me specifically outlining what each tenant is responsible for with respect to the cleaning or maintenance of each area of the rental unit during this tenancy. As the tenants were sharing the majority of the rental unit together, I am not satisfied that the evidence before me demonstrates that the outlined cleaning can be attributed directly to the Tenant's negligence as opposed to a shared responsibility. However, the undisputed evidence is that the Tenant had cats in the rental unit, and based on the evidence before me, I am not satisfied that the Tenant adequately vacuumed or sufficiently cleaned the rental unit of the cat hair. As such, I am satisfied that the Landlords have substantiated a claim for vacuuming and cleaning the window screens of cat hair. In the submitted cleaning invoice, these tasks took three hours to complete, at a cost of $30.00 per hour. Therefore, I grant the Landlords a monetary award in the amount of

$90.00. While the Landlords advised that they had to vacuum again at a cost of $80.00, I dismiss this claim in its entirety as it is evident to me that this was done due to their belief that an unsatisfactory job was completed by the person they paid to originally vacuum.

With respect to the Landlords' claim for the cost of shampooing the carpets, the undisputed evidence before me is that the Tenant had cats, that it was her belief that she was not required to shampoo the carpets, and that she did not do so at the end of the tenancy. Furthermore, the Landlords submitted an invoice for carpet cleaning indicating that there were stains related to pets. I find it important to note that Policy Guideline #1 states that "The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises." As it is undisputed that that Tenant had cats in the rental unit, I am satisfied that she would be responsible for shampooing the carpets at the end of the tenancy. As such, I am satisfied that the Landlords have substantiated a claim for this issue, and I grant the Landlords a monetary award in the amount of **$241.50.**

With respect to the Landlords' claim for the cost of the curtain rod, blinds, and replacement curtains, the evidence provided by the parties is conflicting with respect to what actually happened to these items and who was responsible for removing them. As the burden is on the Landlords to establish their claim, I am not satisfied by the evidence before me that the Landlords have proven on a balance of probabilities who was responsible for the loss or damage to these items. Consequently, I dismiss this portion of the Landlords' claim in its entirety.

With respect to the Landlords' claim for the cost of the dump fees, the Landlords provided an invoice for this amount and I do not find it reasonable that they would make a specific trip to the dump if the municipality would simply have taken the refuse away. As such, I am satisfied that the Landlords have substantiated a claim for this issue, and I grant the Landlords a monetary award in the amount of **$10.00.**

Finally, with respect to the Landlords' claim for the costs associated with travelling to the rental unit to rectify all of the above issues, the Landlords were advised in the hearing that there are no provisions in the *Act* which provide compensation for these requested costs. As such, I dismiss this portion of the Landlords' claim in its entirety.

As the Landlords were partially successful in their claims, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this application. Under the offsetting

provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit and pet damage deposit in partial satisfaction of the debts outstanding.

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

Calculation of Monetary Award Payable by the Tenant to the Landlords

Rent for June 2018	$1,000.00
Insufficient funds charge	$6.00
Vacuuming and cleaning of cat hair	$90.00
Shampooing of carpets	$241.50
Disposal of refuse	$10.00
Filing fee	$100.00
Security deposit	-$500.00
Pet damage deposit	-$300.00
TOTAL MONETARY AWARD	**$647.50**

Conclusion

The Landlords are provided with a Monetary Order in the amount of **$647.50** 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: November 26, 2018

Residential Tenancy Branch