Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE POWELL RIVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

On September 12, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (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.*

On September 13, 2018, the Landlord amended their Application to increase the amount of monetary compensation they were seeking.

D.A., B.F., and K.C. attended the hearing as agents for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package, evidence, and amendment were served by registered mail on September 13, 2018 and the Tenant acknowledged that she received this package. 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 amendment.

The Tenant advised that she did not submit any evidence.

All parties 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 compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord 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.

All parties agreed that the Tenant originally rented part of the property but the tenancy for the whole property started on July 6, 2016 and ended on August 31, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at $1,950.00 per month, due on the first day of each month. A security deposit of $700.00 was also paid.

All parties agreed that a move-in inspection report was conducted with the Tenant on January 29, 2016 for the upstairs rental unit and a move-in inspection report was conducted with the Tenant for the downstairs rental unit on July 6, 2016. A copy of the move-in inspection report where the Tenant agreed to the documented condition of the rental unit was submitted.

As well, all parties agreed that a move-out inspection report was scheduled for August 31, 2018 and the Tenant attended this inspection. A copy of the move-out inspection report where the Tenant agreed to the documented condition of the rental unit was submitted for the basement unit. However, a copy of the move-out inspection report where the Tenant disagreed to the documented condition of the rental unit was submitted for the upstairs unit.

The Landlord submitted that they are seeking compensation in the amount of **$367.50** for the cost of repairing a large hole in the wall that occurred as a result of the Tenant moving out a tanning bed. As well, there were other holes in the walls that required repairing and there were posters that caused damage to the walls when they were removed. The Landlord submitted an invoice as documentary evidence to support the cost to repair these issues.

The Tenant confirmed that she had a tanning bed in the rental unit and that she hired movers to move this out. The Tenant acknowledged that the movers caused the hole in the wall. She also acknowledged that she was responsible for the poster damage. However, she stated that the move-in inspection report noted many nail holes and scuffs on the walls. She advised that it had been many years since any upkeep was performed on the rental property and that when she moved in, she advised the Landlord that it was not necessary to paint the walls even though the Landlord told her that the rental unit had not been painted in 10 years.

The Landlord confirmed that this unit had not been painted during the tenancy and they did not know when it was painted last.

The Landlord submitted that they are seeking compensation in the amount of **$96.94** for the cost of replacing hidden slider screens that were destroyed. They referenced this damage on the move-out inspection report and the invoice submitted as the cost to replace these screens.

The Tenant acknowledged that there was a small hole in one of the screens; however, she stated that she advised the Landlord multiple times that these screens were not retracting properly but the Landlord made no attempts to fix them. On one occasion, the Landlord advised her that the property was up for sale, so no repairs would be conducted. As such, the Tenant stopped using the screens after this. She stated that these screens were not damaged but were not functioning properly.

The Landlord submitted that they were seeking compensation in the amount of **$19.63** for the cost of replacing a missing floor register and light bulbs; however, the Landlord advised that they were not longer willing to pursue this claim. As such, this claim was dismissed in its entirety.

The Landlord submitted that they are seeking compensation in the amount of **$25.00** for the cost of a late fee for August 2018 rent. They indicated that this charge is permissible as per the tenancy agreement if rent is paid late.

The Tenant acknowledged that this clause for the late fee was included in the tenancy agreement.

Finally, the Landlord submitted that they are seeking compensation in the amount of **$1,950.00** for the cost of August 2018 rent. They stated that they received notice from the Tenant on July 31, 2018 that she would be vacating the rental unit on August 31, 2018. They advised that the Tenant did not pay rent for August 2018.

The Tenant stated that she was advised around Easter that the rental unit would be listed for sale, so she started looking for a new place to rent. She submitted that she was told that once sold, she would receive two months' notice and one month's compensation. However, she believes she was tricked by the Landlord as she was told by the realtor that she was required to leave by August 31, 2018 so she gave written notice to end her tenancy. However, she did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property nor did she have any written confirmation from the Landlord that she would be entitled to one month's compensation.

Both parties agreed that the Tenant provided her forwarding address to the Landlord on the move-out inspection report on August 31, 2018.

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.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As the condition inspection reports were completed, I am satisfied that the Landlord still retains a right to claim against the security deposit.

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 to the Landlord on August 31, 2018 and the Landlord made their Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the 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*. Therefore, the doubling provisions do not apply.

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."

Regarding the Landlord's claim in the amount of $367.50 for the cost of repairing holes in the walls and repainting, I am satisfied that the Tenant was responsible for the holes in the walls and damage to the walls which required repainting. However, I find it important to note that Policy Guideline #40 indicates that the useful life of interior paint is approximately four years. As the consistent evidence is that the walls were not painted in quite some time in this area of the rental unit, I am satisfied that the Landlord should bear some cost in rectifying this issue. As a result, I am reducing the claim awarded to the Landlord. I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **$275.00** to rectify these issues.

With respect to the Landlord's claim in the amount of $96.94 for the cost of replacing hidden slider screens, the consistent evidence is that the Tenant did do some damage to the screens. Furthermore, there is no evidence that these were damaged or not functioning properly and that the Landlords were advised of this. As such, I find that the inspection reports and documentary evidence carry more weight on this point. Consequently, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **$96.94** to repair these items.

Regarding the Landlord's claim in the amount of $25.00 for the late rent fee, as both parties acknowledge that August 2018 rent was not paid, and that the tenancy agreement contains a clause for this fee, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **$25.00** to recover their cost for this item.

Finally, regarding the Landlord's claim in the amount of $1,950.00 for the rent of August that was not paid, I find it important to note that Section 51 of the *Act* reads in part as follows:

> ***51*** *(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

However, the undisputed evidence is that the Tenant was not served with a Two Month Notice to End Tenancy for Landlord's Use of Property. This is the only notice in the *Act* that provides compensation for a Tenant when served by the Landlord. Without any other agreements in writing to confirm that the Tenant was permitted to withhold August 2018 rent, I do not find that the Tenant was authorized to forgo paying this amount. As such, I am satisfied that the Landlord has established a claim for a monetary award in the amount of **$1,950.00** for the arrears.

As the Landlord was successful in this Application, I find that they 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 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

Drywall repair and painting	$275.00
Replacement of screens	$96.94
Late rent fee	$25.00
August 2018 rent arrears	$1,950.00
Filing fee	$100.00
Security deposit	-$700.00
TOTAL MONETARY AWARD	**$1,746.94**

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$1,746.94** 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: January 22, 2019

Residential Tenancy Branch