Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On September 14, 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*.

J.H. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord stated that she served the Tenant a Notice of Hearing package and her evidence by registered mail on September 14, 2018 (the registered mail tracking number is on the first page of this decision) to the forwarding address provided by the Tenant. The Tenant advised that she did not receive this package; however, she did confirm the address used for service was the address she provided to the Landlord. 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.

The Tenant stated that she did not provide any evidence for this file.

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 tenancy started on November 1, 2012 and the tenancy was supposed to end on August 15, 2018. A friend of the Tenant was supposed to meet the Landlord for a move-out inspection report on August 27, 2018; however, this person did not attend. The Tenant mailed the Landlord the keys to the rental unit in September 2018. Rent was established at $1,218.48 per month and was due on the first day of each month. A security deposit of $537.50 and a pet damage deposit of $537.50 was also paid.

All parties agreed that the Tenant provided her forwarding address in writing on September 4, 2018 by email. As well, both parties agreed that the $537.50 pet damage deposit was returned to the Tenant on September 5, 2018.

Both parties agreed that a move-in inspection report was conducted with the Tenant on November 1, 2012 and the Landlord submitted a copy of this report. She also submitted into documentary evidence a copy of the final opportunities for the Tenant to attend a move-out inspection and a copy of the move-out inspection report completed in the Tenant's absence on August 27, 2018.

The Landlord advised that she was seeking compensation in the amount of **$32.00** for the cost of the Tenant's insufficient funds cheque for July 2018 rent as this was the amount that the bank charged her. She advised that the tenancy agreement, submitted as evidence, allows for this to be charged. She also provided a copy of the Tenant Rental Ledger to support this claim.

The Tenant had surgery around this time and was unaware that this cheque bounced; however, she did acknowledge that this happened, and she did end up paying the rent in full. She agreed that she was responsible for this fee.

The Landlord advised that she was seeking compensation in the amount of **$587.05** for the cost of rent from the period of August 1 to 15, 2018. She stated that she was awarded an Order of Possession against this Tenant from a previous Dispute Resolution proceeding and served it on the Tenant on August 8, 2018, ordering that the Tenant give up vacant possession of the rental unit on August 15, 2018. While the Landlord did not receive vacant possession of the rental unit until much later, she is only seeking compensation for the period of August 1 to 15, 2018.

The Tenant stated that she paid August 2018 rent, but the Landlord returned the cheque. She advised that she did not pay what was owed because of mold issues in the rental unit.

Finally, the Landlord advised that she was seeking compensation in the amount of **$14.52** and **$24.19** for the cost of two parking agreements that the Tenant signed. She stated that these are pro-rated amounts for the time period of August 1 to 15, 2018.

The Tenant stated that the Landlord and different contractors that came to do repairs on the property used her parking spots occasionally and that she should not have to pay this amount. She advised that she did not have a problem with these people using her spot, that it was utilized like this for years, and that she never brought it up as an issue with the Landlord.

The Landlord advised that she would stop in occasionally and use any available parking spot to deliver notices or conduct business. Furthermore, she stated that contractors would sometimes use whichever parking spot was available and would leave their business card behind in case a tenant needed to call to have the vehicle moved.

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 Landlord 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 Landlord 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.

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 comply with the requirements of ensuring attendance for the condition inspections.

However, in this case, the Landlord completed a move-in inspection report with the Tenant and provided her with at least two opportunities to conduct a move-out inspection. As such, I am satisfied that the Landlord has not extinguished her right to claim against the security deposit.

With respect to the security deposit then, 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*.

Based on the undisputed evidence before me, I am satisfied that the Landlord received the Tenant's forwarding address in writing on September 4, 2018 by email. As the tenancy ended prior to this, I find that the date she received the Tenant's email is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full but did make an Application to keep the deposit within 15 days of September 4, 2018.

As the Landlord did make an Application to retain the deposit within 15 days of September 4, 2018, I am satisfied that the Landlord did not breach the requirements of Section 38 and the doubling provisions of the *Act* do not apply in this circumstance. Furthermore, the undisputed evidence is that the Landlord returned the pet damage

deposit in full within 15 days of September 4, 2018. As such, the doubling provisions of the *Act* do not apply to this either.

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 claims for compensation in the amount of $32.00 for the cost of the Tenant's insufficient funds cheque for July 2018 rent, as the Tenant acknowledged that she was responsible for this fee, I am satisfied that the Landlord should be granted a monetary award in the amount of **$32.00** to rectify this issue.

With respect to the Landlord's claims for compensation in the amount of $587.05 for the cost of rent from the period of August 1 to 15, 2018, I am satisfied of the undisputed evidence that the Landlord was awarded an Order of Possession requiring the Tenant to vacate the rental unit two days after service of the Order. As well, I am satisfied that the Order was served on the Tenant on August 8, 2018 and that the Landlord did not have vacant possession of the rental unit until the move-out inspection report was conducted on August 27, 2018. As such, and as the Landlord is only requesting rent for August 1 – 15, 2018, I am satisfied that the Landlord has established her claim for rent arrears. The Landlord is granted a monetary award in the amount of **$587.05** for this claim.

Regarding the Landlord's last claim in the amount of $14.52 and $24.19 for the cost of two parking agreements that the Tenant signed, I am satisfied from the evidence that the Tenant had an agreement for these parking spots. However, as the undisputed evidence is that the Tenant did not have exclusive use of these spots and that they were occasionally used by the Landlord and different contractors, I am satisfied that the Tenant suffered some loss here and I find that the Tenant should not be responsible for these amounts as a result of a loss that she incurred. As such, I dismiss the Landlord's claims on these issues in their entirety.

As the Landlord was successful in her claims, I find that the Landlord is 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 amount awarded.

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

Insufficient funds fee	$32.00
Rent for August 1 to 15, 2018	$587.05
Recovery of filing fee	$100.00
Less security deposit	-$537.50
TOTAL MONETARY AWARD	**$181.55**

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$181.55** 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 21, 2019

Residential Tenancy Branch