



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications filed by the parties. On March 5, 2018, the Tenant made an Application for Dispute Resolution seeking a return of her security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 13, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was originally set down to be heard on October 1, 2018 at 1:30 PM. The Tenant had her mother attend the hearing and the Landlords participated in that hearing as well. The Tenant’s mother advised that the Tenant was out of country and based on the remoteness of her location, she was unable to call in and attend the hearing. The Landlords advised that they had made their own Application for Dispute Resolution and hoped to have it heard during this hearing; however, their hearing was scheduled for a future date. They advised that they served their Notice of Hearing package to the Tenant by registered mail two to three weeks before the October 1, 2018 hearing; however, the Tenant did not pick up this package, likely because she was out of country.

Consequently, this hearing was set down to be re-scheduled as a cross-application to be heard on January 15, 2019 at 1:30 PM.

The Landlords attended the January 15, 2019 hearing. There was no appearance at this hearing by the Tenant. All in attendance provided a solemn affirmation.

As per the Interim Decision dated December 20, 2018, the Landlord advised that they re-served the Interim Decision, the Notice of Hearing package, the amendment, and their evidence to the Tenant by Xpresspost on December 22, 2018 and they attached a

receipt to confirm service (the Xpresspost tracking number is on the first page of this decision). The address they used for service was the address provided to them by the Tenant which was the same address that the Tenant used in her Application. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed.

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 Tenant entitled to a return of double the security deposit and pet damage deposit?
- Is the Tenant entitled to recovery of the filing fee?
- Are the Landlords entitled to monetary compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards these debts?
- Are the Landlords entitled to recovery of 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 December 1, 2016 and the Tenant provided notice to end her tenancy on December 20, 2017, effective for February 1, 2018. The rent was established at \$2,125.00 per month, due on the first of each month. A security deposit of \$1,025.00 and a pet damage deposit of \$500.00 was also paid.

The Landlords advised that they completed a move-in inspection report with the Tenant on November 11, 2016. They stated that they agreed with the Tenant by email to meet at noon on February 1, 2018 to conduct a move-out inspection report. They arrived at the rental unit at noon and it was a chaotic scene as there were movers and cleaners present. The Tenant was not there but her father was. The Tenant arrived at 1:00 PM; however, she could not participate in the inspection as she was still moving and

cleaning. At 5:00 PM, the Landlords called the Tenant from her father's phone, but she refused to return to participate in the inspection. As the new tenants wanted to move in and as no representative for the Tenant would participate in the inspection, the move-out inspection was conducted in the Tenant's absence. A copy of these reports were submitted into evidence.

The Landlords provided a monetary order worksheet and advised that they were seeking compensation in the amount of **\$75.00** for the rent arrears for January 2018. They stated that they increased the rent effective January 2018 from \$2,050.00 to \$2,125.00 and they submitted into documentary evidence the approved Notice of Rent Increase form to support this claim.

The Landlords advised that they were seeking compensation in the amount of **\$200.00** because of the extensive damage left by the Tenant and that further cleaning had to be completed. They stated that the bedroom door was missing for two weeks, that the bathroom was ripped up, that the storage area was filled with the Tenant's property, and that a painter had to re-paint areas of the rental unit. As a result, the Landlords compensated the new tenants on the main floor for having to live in these conditions. They submitted a rent payment history to support that the new main tenants' rent was reduced for February 2018.

The Landlords are also seeking compensation in the amount of **\$50.00** because the basement tenants were entitled to storage space; however, the Tenant still had her property occupying this storage space. As a result, the Landlords compensated the basement tenants for the inconvenience of a lack of storage. They submitted a rent payment history to support that the basement tenants' rent was reduced for February 2018. They also reference pictures submitted into evidence to corroborate this claim.

The Landlords submitted that they were seeking compensation in the amount of **\$250.00** because of a continuation of work, repairs, and a loss of storage space that the new tenants on the main floor lived through. They submitted a rent payment history to support that the new main tenants' rent was reduced by this amount for March 2018.

The Landlords are seeking compensation in the amount of **\$250.00** because the Tenant caused a leak in the bathroom that dripped downstairs. The Landlords submitted that they compensated the basement tenants in this amount as they had to live through the repairs to their ceiling as a result of this leak.

They were also seeking compensation in the amount of **\$100.00** for the loss they suffered due to a broken oven door. The Landlords sold the rental unit in 2018 and \$1,000.00 was negotiated off the price of the sale due to this broken appliance. However, the Landlords are only seeking \$100.00 to cover this loss. They submitted a letter from their realtor confirming that this negotiation took place.

They submitted that they were also seeking compensation in the amount of **\$1,135.00** for the cost to repair the landscape that was ruined by the Tenant's dogs and to clean up debris that was left behind by the Tenant. They submitted pictures and an invoice of the total cost of the work completed; however, the \$1,135.00 is only a portion of what they were charged to have this work completed.

The Landlords are seeking compensation in the amount of **\$825.98** for the cost to have parts of the rental unit sanded and painted, to have nail holes filled, to replace a door, to fix the ceiling, and to replace light bulbs and broken blinds. They referenced pictures to support these claims and cited the invoice of the person that completed the work, who charged a total of \$3,000.00. However, the Landlords were only seeking to recover \$825.98.

They were also seeking compensation in the amount of **\$1,500.00** for the cost to remove a door, fix the bathroom ceiling and the basement ceiling, and remove a lean-to that the Tenant left behind after the tenancy ended. The referenced pictures submitted into evidence and an invoice for this work to support these claims.

The Landlords submitted a restaurant receipt of **\$30.00** because the new tenants showed up to move into the rental unit but were unable to because the Tenant took extra time to move out. As such, the Landlord provided a meal to the new tenants for their inconvenience.

The Landlords submitted receipts of **\$4.48** and **\$13.43** for the cost to replace a wall bracket that the Tenant took and a rug that was purchased to cover the bathroom floor as it was being repaired.

The Landlords stated that the Tenant did not return to retrieve her property until May 31, 2018 and they referenced numerous photos to demonstrate the amount of belongings left behind. They advised that they were still required to dispose of property that the Tenant left behind and this cost them **\$73.00**. They submitted pictures and copies of these receipts.

The Landlords advised that the Tenant altered three doors within the rental unit which rendered them unusable. The Landlords purchased three used doors to replace these broken doors and they referenced the receipt of **\$128.80** and the pictures to support these claims.

The Landlords stated that the Tenant left garbage and refuse behind, and the downstairs tenant offered to rent a vehicle to dispose of this refuse. The Landlords referenced a photo of this garbage and submitted a receipt for the cost of the rental truck and the disposal fees. The Landlords are only seeking compensation in the amount of half the dump fees of **\$39.60** and half the truck rental fee of **\$63.20**.

Finally, the Landlords are seeking compensation in the amount of **\$500.00** for the cost of storage as the Tenant's property occupied 90% of the shed/garage, and this space is allotted for new tenants as part of their rent. They advised that \$125.00 per month for the months of February to May is comparable to the cost of a storage locker. They referenced numerous pictures to support this claim.

The Landlords advised that they received the Tenant's forwarding address via email on February 3 or 4, 2018 and subsequently sent a registered letter to the Tenant outlining the damage and costs to rectify them. The Tenant did not respond to this letter. The Landlords advised that they did not have the Tenant's written consent to keep any amount from the 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.

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 Landlords do not complete the condition inspection reports. Furthermore, Section 17(2) of the *Residential Tenancy Regulations* states that the Tenant must provide an alternate time for a move out inspection if unavailable for the scheduled inspection. The Landlords submitted an email dated February 2, 2018 from the Tenant indicating that she was able to meet that day to complete a move-out inspection report. However, as the parties agreed to a move-out inspection report on February 1, 2018, as the Tenant was required to move out by February 1, 2018, and as the new tenant was scheduled to move in on that date, I find that the Tenant's proposal for an alternate time was suggested too late to be reasonable

or acceptable. As such, I am satisfied that the Landlords complied with the *Act* and conducted a move-out inspection report. Therefore, the Landlords still retain a right to claim against the security deposit and pet damage deposit.

However, 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the *Act*, if the Tenant wants the security deposit returned, she must provide a forwarding address in writing to the Landlords first. The undisputed evidence is that the Tenant provided the Landlords with her forwarding address by email on or around February 3, 2018. As the Landlords made their Application on September 13, 2018, more than 15 days after receiving the Tenant's forwarding address in writing, I am satisfied that the doubling provisions of the *Act* do apply. Therefore, I find that the Tenant is entitled to a monetary award in the amount of \$2,050.00 which is double the security deposit and \$1,000.00 which is double the pet damage deposit, totaling **\$3,050.00**.

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' claims for compensation in the amount of \$75.00 for the cost of January 2018 rent arrears, based on the undisputed evidence, I am satisfied that the Landlords have established their claim. As such, I grant a monetary award in the amount of **\$75.00** for this claim.

With respect to the Landlords' claims for compensation in the amount of \$200.00, \$50.00, \$250.00, and \$250.00 that the Landlords compensated their tenants for, due to the inconvenience of having to live in those conditions in February and March 2018 and for the reduced storage space, I am satisfied by the evidence provided and by the

undisputed testimony that the Landlords have sufficiently established these claims. Consequently, I grant a monetary award in the amount of **\$750.00**.

Regarding the Landlords' claims for compensation in the amount of \$100.00 for the oven door, I am satisfied by the evidence provided and by the undisputed testimony that this was broken as a result of the Tenant's actions. As such, I find that the Landlords have sufficiently established this claim and I grant a monetary award in the amount of **\$100.00** to rectify this issue.

With respect to the Landlords' claims for compensation in the amount of \$1,135.00 for the cost to repair the garden and clean up after the Tenant, I am satisfied by the evidence provided and by the undisputed testimony that these issues were necessary to correct and were due to a result of the Tenant's negligence. As such, I am satisfied that the Landlords have established their claim on this point and I grant a monetary award in the amount of **\$1,135.00**.

With respect to the Landlords' claims for compensation in the amount of \$825.98 for the costs for sanding and painting and repairing the rental unit, I am satisfied by the evidence provided and by the undisputed testimony that these issues were caused by the Tenant's negligence. As such, I am satisfied that the Landlords have established their claim to fix these issues and I grant a monetary award in the amount of **\$825.98**.

In regards to the Landlord's claims for compensation in the amount \$1,500.00 for the significant repairs that the Landlords were required to rectify, I am satisfied by the evidence provided and by the undisputed testimony that these issues were caused by the Tenant's negligence. Consequently, I am satisfied that the Landlords have established their claim on this point and I grant a monetary award in the amount of **\$1,500.00**.

With respect to the Landlords' claims for compensation in the amount of \$30.00 because they had to compensate the new tenants for a meal as they were not able to move in due to the Tenant's extended move out, I am satisfied by the evidence provided and by the undisputed testimony that this was an issue that was a direct result of the Tenant. Consequently, I am satisfied that the Landlords have established their claim on this point and I grant a monetary award in the amount of **\$30.00**.

With respect to the Landlords' claims for compensation in the amount of \$4.48 and \$13.43 for the cost to replace a missing wall bracket and a rug that was purchased, I am satisfied by the evidence provided and by the undisputed testimony of these expenses.

Consequently, I am satisfied that the Landlords have established their claim on this point and I grant a monetary award in the amount of **\$17.91**.

Regarding the Landlords' claims for compensation in the amount of \$73.00, \$39.60, and \$63.20 for the costs associated with disposal of junk and debris left behind at the end of the tenancy, I am satisfied by the evidence provided and by the undisputed testimony of these costs. Consequently, I am satisfied that the Landlords have established their claim on these issues and I grant them a monetary award in the amount of **\$175.80**.

Regarding the Landlords' claims for compensation in the amount of \$128.80 for the replacement of doors in the rental unit, I am satisfied by the evidence provided and by the undisputed testimony that this was a reasonable cost to repair these items. Consequently, I am satisfied that the Landlords have established their claim on this point and I grant them a monetary award in the amount of **\$128.80**.

Finally, with respect to the Landlords seeking compensation in the amount for the cost of storage as the Tenant's property occupied 90% of the shed/garage and was not available for their future tenants, I find it important to note that the Landlords requested compensation for reduced storage for their tenants already for the months of February and March 2018. As such, I am satisfied by the evidence provided and by the undisputed testimony that an award for the months of April and May 2018 is justified only. Consequently, I am satisfied that the Landlords have established their claim on this point and I grant them a monetary award in the amount of **\$250.00**.

As the Tenant did not attend the hearing and was unsuccessful in her claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

As the Landlords were 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 amount awarded.

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 Landlords to the Tenant

Double the security and pet damage deposit	\$3,050.00
TOTAL MONETARY AWARD	\$3,050.00

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 Tenants to the Landlords

Costs substantiated by the Landlords	\$4,988.49
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$5,088.49

Total monetary award to the Landlords: \$5,088.49 - \$3,050.00 = **\$2,038.49**

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$2,038.49** 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 29, 2019

Residential Tenancy Branch