



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

On April 6, 2019, the Landlords made an Application for Dispute Resolution 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*.

The Landlord attended hearing; however, the Tenant did not make an appearance. The Landlord provided a solemn affirmation.

The Landlord advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail on April 12, 2019 and the tracking history indicated that this package was signed for (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package.

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

- Is the Landlord entitled to a Monetary Order for rent arrears?
- 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.

The Landlord advised that the tenancy started on March 1, 2018, and that the tenancy ended when the Tenant vacated the rental unit on March 23, 2019. Rent was established at \$2,950.00 per month, due on the first day of each month. A security deposit of \$1,4750.00 was also paid.

The Landlord advised that a move-in inspection report was conducted on March 1, 2018 with the Tenant. As well, she advised that a move-out inspection report was conducted with an agent for the Tenant on March 23, 2019. A copy of the move-in and move-out inspection reports were submitted as documentary evidence.

She stated that the Tenant provided a forwarding address by email on April 2, 2019 and she included this as documentary evidence as well.

The Landlord submitted on her Application that she was seeking compensation in the amount of **\$400.00** because the Tenant was provided with two sets of entry keys, two key fobs, and one mailbox key and did not return these in their entirety at the end of the tenancy. During the hearing, she stated that she paid \$100.00 for a new fob, \$30.00 per key for three keys, and \$125.00 plus tax for a new mailbox key, so she is actually seeking only **\$330.00**. She submitted an email from the Tenant, as documentary evidence, dated April 2, 2019 where he acknowledges that he “can’t find” the extra keys.

The Landlord advised that she was seeking compensation in the amount of **\$400.00** for the cost to clean the rental unit and dispose of garbage at the end of the tenancy. She referenced the deficiencies listed on the move-out inspection to support this position. She stated that she hired a couple to pack four big boxes of property left behind, to clean, and to remove garbage. She advised that the cleaning took five hours at a rate of \$50.00 per hour and the garbage disposal cost \$150.00. She also referenced pictures submitted as documentary evidence to support her testimony with respect to the

condition of the rental unit. However, she did not submit any receipts for any cleaning completed or for any disposal of garbage to support these claims.

The Landlord advised that she was seeking compensation in the amount of **\$200.00** for the cost of a strata fine as the Tenant did not pay the move-out fee. As well, she is seeking compensation in the amount of **\$400.00** for the cost of other strata fines for improperly disposing of garbage and for not booking the elevator for moving out. She advised that due to life circumstances, she did not submit a copy of the invoice from the strata to support these claims, despite being provided with this invoice on May 20, 2019.

The Landlord advised that she was seeking compensation in the amount of **\$400.00** for the cost to repair damage to the flooring as a result of the washing machine overflowing, to touch up paint around the rental unit, and to repair the closet door that came off the track. She referenced some pictures submitted as documentary evidence to support her testimony with respect to the condition of the rental unit. She stated that she hired a handyman to fix these problems and he charged a flat rate of \$200.00 for the initial visit. The repairs totalled \$200.00; however, she did not submit a copy of the invoice for this work to support these claims.

Finally, the Landlord submitted that she was seeking compensation in the amount of **\$2,950.00** for March 2019 rental loss as the Tenant did not pay March 2019 rent.

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.

With respect to 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*.

Based on the undisputed evidence before me, I am satisfied that the Landlord was served with the Tenant's forwarding address by email on April 2, 2019. As the tenancy

ended on March 23, 2019, 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 made an Application to keep the deposit within 15 days of April 2, 2019. Thus, I am satisfied that the Landlord complied with the requirements of Section 38, and the doubling provisions of the *Act* do not apply in this circumstance.

With respect to the Landlord's claim for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

Regarding the Landlord's claims, the first one I will address is the cost associated with the replacement of the keys and fob. Based on the undisputed testimony and the email from the Tenant acknowledging that all of the keys were not returned, I am satisfied that the Landlord has provided sufficient evidence to corroborate a monetary award in the amount of **\$330.00** for this claim.

With respect to the Landlord's claims for the cost associated with cleaning and garbage disposal, I find it important to note the she provided little evidence of the condition of the rental unit, and no receipt to substantiate the cost of the cleaner that she used. Therefore, I am not satisfied that the Landlord has established grounds for this claim, and I dismiss this claim on this issue in its entirety.

Regarding the Landlord's claims for the cost associated with the move-out fee as well as the other strata fines, I find it important to note the she did not provide any evidence to substantiate these claims despite being provided with this statement from the strata in May 2019. As such, I am not satisfied that the Landlord has established grounds for these claims, and I dismiss them in their entirety.

With respect to the Landlord's claims for the cost associated with repairs to the rental unit, I find it important to note the she provided minimal evidence outlining the alleged damage, and no receipt or invoice to substantiate the cost of these repairs, despite it being relatively easy to have some evidence to support these claims. Without any compelling evidence to satisfy the Landlord's burden to prove the damage and the subsequent repairs, I dismiss this claim in its entirety.

Finally, in turning my mind to the Landlord's last claim in the amount of the cost associated with March 2019 rental loss, as I am satisfied that the Tenant gave up vacant possession of the rental unit on March 23, 2019, that he was responsible for paying the rent in entire whole month payments, and that he did not pay March 2019 rent at all, I am satisfied that the Landlord suffered a rental loss and that she established that she should be granted a monetary award in the amount of **\$2,950.00** to cover this loss.

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these 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

Replacement of keys and fob	\$330.00
March 2019 rent	\$2,950.00
Less security deposit	- \$1,475.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,905.00

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,905.00** 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: July 24, 2019

Residential Tenancy Branch