



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1932374 ALBERTA LTD. and
[tenant name suppressed to protect privacy]

DECISION

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

Introduction

On February 14, 2019, 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*.

C.H. attended the hearing as an agent for the Landlord and W.C. called into the hearing at 2:10 PM to attend the hearing as a witness for the Landlord. The Tenant attended the hearing and B.H. called into the hearing at 2:36 PM to attend the hearing as a witness for the Tenant. All in attendance provided a solemn affirmation.

C.H. advised that the onsite manager served the Notice of Hearing and evidence package to the Tenant, by hand, on February 22, 2019 at her place of employment, and the Tenant acknowledged that she received this package. C.H. advised that he did not apply for substituted service to permit him to serve in this manner. However, while he was cautioned in the hearing that serving in person at the Tenant’s place of employment is not appropriate, I am satisfied that the Notice of Hearing and evidence package was served in fact, and in accordance with Section 71 of the *Act*.

The Tenant advised that she served her evidence by hand to the onsite manager on May 31, 2019. C.H. confirmed that he received the Tenant’s evidence package, that he reviewed the contents, and that he was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this decision.

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 December 1, 2016 and ended when the Tenant gave up vacant possession of the rental unit on February 3, 2019. Rent was established at \$830.00 per month, due on the first day of each month. A security deposit of \$400.00 was also paid.

All parties agreed that a move-in inspection report was conducted with the Tenant on December 1, 2016.

C.H. advised that a move-out inspection report was conducted on February 4, 2019 and the deficiencies were outlined. He stated that the onsite manager conducted the move-out inspection report in the absence of the Tenant, as the Tenant gave up vacant possession of the rental unit based on an Order of Possession and did not advise the Landlord of when she would be leaving. He advised that the onsite manager did not make any attempts to coordinate a final opportunity to conduct a move-out inspection with the Tenant. A copy of the inspection reports were submitted as documentary evidence.

The Tenant advised that she did not have a good rapport with the onsite manager since their last Dispute Resolution hearing and that she was not contacted to arrange a move-

out inspection. She stated that she hired a person to clean the rental unit, that she vacated the rental unit on February 3, 2019, and that she left the rental unit in the “best state possible”.

The Tenant confirmed that she did not provide a forwarding address in writing to the Landlord and she left the rental unit as quickly as she could to move into her new rental unit.

C.H. submitted that he is seeking compensation in the amount of \$1,660.00, which is comprised of \$830.00 for January 2019 rent and \$830.00 for February 2019 rent. However, as the Landlord was awarded a Monetary Order for January 2019 rent in a previous Dispute Resolution hearing, the Landlord’s claim was amended to **\$830.00** for the rent owing for February 2019 rent (the related file number is listed on the first page of this decision). C.H. advised that not only did the Tenant vacate the rental unit in early February, he was not able to re-rent the unit in February due to the condition that the Tenant left the premises in. As such, he suffered a rental loss of February 2019 rent.

The Tenant made several comments about her displeasure with the living conditions in the rental unit. However, with respect to this issue, she confirmed that she did not vacate the rental unit until February 3, 2019, but this was because the onsite manager barricaded the front door on January 31, 2019 and blocked her access to the storage unit. She stated that she tried to vacate peacefully, but there was no way to do so successfully so she waited for the bailiff to physical evict her. She advised that with a child and a job, she had no time to move. As well, she indicated that her priority was to get to her new rental unit, so she put her money towards moving and the rent and security deposit at her new residence.

C.H. submitted that he is seeking compensation in the amount of \$100.00 for the filing fee of the previous hearing. However, as the Landlord was awarded a Monetary Order for this amount in that previous Dispute Resolution hearing as well, the Landlord’s claim was amended to remove this from his Application.

C.H. submitted that he is seeking compensation in the amount of **\$120.00** for the cost of enforcing the Order of Possession by securing a Writ of Possession in the Supreme Court. He advised that he did not have a receipt to support that this was paid for; however, W.C. confirmed that he paid this cost out of his own pocket and that he had a receipt for this expense.

The Tenant did not have any submissions with respect to this point.

C.H. submitted that he is seeking compensation in the amount of a **\$500.00** estimate for the cost of cleaning, repairing, painting, plumbing, and labour as the Tenant did not leave the rental unit in a rentable state. W.C. advised that the walls were covered in drawings by coloured marker and with children's stickers, which peeled off the paint when removed. He stated that the walls and ceilings were covered in grease and a special primer needed to be applied to rectify this issue. He advised that the trim was crushed, that there were many nails in the walls, and that these were pushed almost flush into the wall instead of being removed entirely. As a result, the walls required lots of patching and the rental unit needed to be repainted entirely. He stated that the top of the stove and under it were not cleaned, that the venetian blinds were damaged, and that there were gouges in the door. He stated that there were plumbing problems and that a toothbrush had been plugging a drain. He submitted that he spent approximately 45 hours in total, on February 5th to 10th, and February 13th, 15th, and 17th, to bring the rental unit back to a re-rentable condition.

C.H. advised that he paid W.C. \$15 per hour for this work and that his costs far exceeded the \$500.00 estimate that he applied for. He did not submit any invoice for the work completed nor did he include photos of the condition of the rental unit or the alleged deficiencies. However, he referred to the deficiencies noted in the move-out inspection report.

The Tenant advised that she did not do anything to the rental unit that was beyond reasonable wear and tear and that she left the rental unit "as best as she could leave it". She stated that the paint the Landlord used was low quality paint and was peeling within a month of her moving into the rental unit. She acknowledged that she was responsible for the ink on the walls; however, due to the quality of the paint, she could not wash the ink off the walls. She advised that she paid a person \$80.00 for approximately four or five hours of time to clean the rental unit. She also stated during the hearing, "do what you will, give me a bill."

B.H. confirmed that the Tenant had hired a person to clean the rental unit. He also stated that they left the rental unit "fairly clean", "pretty clean", and in "decent shape". He advised that they attempted to get as much of the Tenant's belongings out of the rental unit as possible, but the Landlord was "over their head".

Finally, C.H. submitted that he is seeking compensation in the amount of a **\$465.87** for the cost of painting materials required to re-rent the rental unit. He confirmed that the rental unit was last painted prior to the Tenant moving in. He referenced the invoice, submitted as documentary evidence, to support the cost of this claim.

The Tenant did not have any additional submissions with respect to this point.

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 in accordance with the *Act* and *Regulations*. However, these Sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent owing and other compensation, which were not damage claims, the Landlord still retains a right to claim against the security deposit.

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, the first ones I will address are the costs associated with cleaning, repairing, painting, plumbing, labour, and painting supplies in the amounts of \$500.00 and \$465.87 respectively. The Landlord relied on a move-out inspection report that was not completed with the Tenant in accordance with the *Act* and *Regulations*, testimony from the onsite manager outlining the details of the work performed to clean and repair the rental unit, and an invoice that was submitted of the cost of paint supplies.

While the move-out condition inspection reports cannot be relied upon heavily as the

Landlord did not conduct this inspection with the Tenant, I have testimony from the Tenant acknowledging that she was responsible for the ink on the walls. Furthermore, her submission that she left the rental unit “as best as she could leave it”, in conjunction with how quickly she stated she wanted to vacate the rental unit, does not persuade me that she left the rental unit in a satisfactory state. In addition, B.H.’s testimony that the rental unit was left “fairly clean”, “pretty clean”, and in “decent shape” also does not compel me to believe that the rental unit was left without issues. Finally, the Tenant’s statement of “do what you will, give me a bill” suggests some culpability in this regard.

Based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant, more likely than not, did not leave the rental unit in a suitable condition for re-rental. However, the lack of an entirely reliable move-out inspection report and the absence of any photographic evidence reduces, in my mind, the amount of the claim that was substantiated by the Landlord. As such, I am satisfied that the Landlord has provided enough evidence to corroborate a monetary award in the amount of **\$450.00** for these claims only.

In turning my mind to the Landlord’s claim in the amount of \$830.00 for cost associated with February 2019 rental loss, as I am satisfied that the Tenant vacated the rental unit on February 3, 2019 and in a condition which rendered the Landlord unable to re-rent the premises until the deficiencies were rectified, I am satisfied that the Landlord suffered a rental loss and that he established that he should be granted a monetary award in the amount of **\$830.00** to cover this loss.

Finally, with respect to the Landlord’s claim of \$120.00 for the cost of filing for a Writ of Possession, as an Order of Possession was awarded to the Landlord and as he was not guaranteed to have vacant possession of the rental unit, I am satisfied from the undisputed evidence that the should be granted a monetary award in the amount of **\$120.00** for this portion of his claims.

As the Landlord was partially successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application.

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

Arrears associated with February 2019 rent	\$830.00
Cleaning and repairing	\$450.00
Writ of Possession	\$120.00
Less the security deposit	-\$400.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,100.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,100.00** 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: June 10, 2019

Residential Tenancy Branch