



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 June 17, 2019, the Landlord 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 provided solemnly affirmed testimony that to the best of his knowledge, he served the Notice of Hearing and evidence package to the Tenant by registered mail on or around June 24, 2019 but he did not have a registered mail tracking number. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received the Notice of Hearing and evidence package five days after it was mailed.

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 July 1, 2018, and that the tenancy ended when the Tenant vacated the rental unit on May 4, 2019. Rent was established at \$1,375.00 per month, due on the 31st day of each month. A security deposit of \$700.00 was also paid. He was cautioned that he collected a security deposit that exceeded the amount allowable under the *Act*. A signed tenancy agreement was submitted as documentary evidence.

He advised that a move-in inspection report was conducted on July 1, 2018 with the Tenant; however, a move-out inspection report was not conducted as the Tenant gave up vacant possession of the rental unit and “disappeared”. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

He stated that the Tenant provided a forwarding address in writing via mail, in the form of a letter dated June 4, 2019 and he included this as documentary evidence as well.

He submitted on his Application that he was seeking compensation in the amount of **\$1,375.00** for May 2019 rental loss as she did not pay this month’s rent and simply “disappeared” on May 4, 2019.

In addition, he advised that he was seeking compensation in the amount of **\$1,200.00** for the cost to repair damage and clean the rental unit. He stated that the Tenant broke several doors and damaged the door frames, peeled the wallpaper, and left garbage behind. He hired a person to rectify these issues; however, he did not submit an invoice to substantiate the costs incurred, he did not know how many hours it took this person to fix these issues, he did not know how much this person charged per hour for labour, and he did “not know how much it all cost for repairs”. He just stated that this person quoted him \$1,200.00; however, he then stated that it only cost \$1,000.00 as he was also asking \$200.00 for cleaning expenses that he paid to a different person. He

referenced pictures submitted as documentary evidence to support his testimony with respect to the condition of the rental unit.

He then stated that he hired a cleaner to clean the rental unit and this person charged \$30.00 per hour for about “six and a half to seven hours” of labour. He did not submit an invoice to substantiate the cost incurred for this work and he could not explain how the hours he testified to, at the rate per hour charged for cleaning, equalled the \$200.00 that he was seeking. He advised that he did not submit more evidence to substantiate these claims because he had a “lot of things going on” and has 14 rental properties.

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 mail on or around June 4, 2019. As the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around May 4, 2019, I find that the date the Landlord received the Tenant’s letter is the date which initiated the 15-day time limit for him 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 June 4, 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 May 2019 rental loss. Based on the undisputed evidence, the Tenant did not provide any written notice to end the tenancy and did not pay May 2019 rent. As such, I am satisfied that when the Tenant gave up vacant possession of the rental unit on May 4, 2019, that she was, at minimum, responsible for paying the rent for the entire month of May. Consequently, 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 **\$1,375.00** to cover this loss.

With respect to the Landlord's claims for the costs associated with repairing the rental unit, garbage disposal, and cleaning, I find it important to note the he provided some pictures of the condition of the rental unit, but no receipts or invoices to substantiate the cost of the repair person, the cost of the materials used to repair the issues, or the cost of the cleaner that he hired. Based on the scant evidence provided, I am satisfied that the Tenant did not leave the rental unit in a suitable condition at the end of tenancy. However, I do not find that the Landlord has established a basis for the amount of compensation that he was seeking as he had no evidence to corroborate his expenses incurred. Therefore, I am not satisfied that the Landlord has established grounds for this claim. I find that, from what the Landlord has provided, I am satisfied he should be awarded a nominal award in the amount of **\$125.00** to cover the costs associated with this claim.

As the Landlord was partially successful in his 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 Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

May 2019 rent	\$1,375.00
Cost of repairs and cleaning	\$125.00
Less security deposit	- \$700.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$900.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$900.00** 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: August 23, 2019

Residential Tenancy Branch