



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On May 15, 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 and pet damage 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*.

On August 14, 2019, the Landlord amended her Application to increase the amount of monetary compensation she was seeking pursuant to Section 67 of the *Act*.

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

The Landlord advised that she served only one Notice of Hearing package and some evidence to the Tenants by registered mail on May 21, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that both Tenants signed for this package. While each Respondent was not served individually as per Rule 3.1 of the Rules of Procedure, as both Respondents signed for this package, I am satisfied that the Tenants were both served the Landlord’s Notice of Hearing and evidence package in accordance with Sections 89 and 90 of the *Act*.

She advised that she served the Amendment and some evidence, containing primarily text messages, to the Tenants by registered mail on August 14, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that Tenant C.W. signed for this package on August 18, 2019. However, as service of this Amendment and evidence did not comply with the timeframe requirements of Rule

4.6 of the Rules of Procedure, the amount sought by the Landlord in the Amendment was dismissed with leave to reapply. As well, the additional evidence was excluded and not considered when rendering this decision; however, the Landlord was allowed to provide testimony with respect to this evidence.

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 compensation?
- Is the Landlord entitled to apply the security deposit and pet damage 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 January 15, 2019, for a fixed term of one year, ending January 15, 2020. However, the tenancy ended when the Tenants vacated the rental unit on May 1, 2019. She stated that rent was established at \$1,900.00 per month but was revised to \$2,050.00 per month, due on the fifteenth day of each month. A security deposit of \$950.00 and a pet damage deposit of \$950.00 were also paid. A signed tenancy agreement was submitted as documentary evidence.

She advised that a move-in inspection report was conducted on February 25, 2019 with the Tenants and this was scheduled by mutual consent. However, a move-out inspection report was not conducted as the Tenants gave up vacant possession of the rental unit and did not attend their requested move out inspection time on May 4, 2019. She advised that the Tenants signed the move-in inspection report, but the move-out

inspection report was conducted in the Tenants' absence. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

She stated that the Tenants never provided a forwarding address in writing; however, she filed this Application using the address provided by the Tenants in their own Application for Dispute Resolution (the relevant file number is included on the first page of this decision).

She advised that she was seeking compensation in the amount of **\$1,942.56** for the cost to repair damage to the floors. She stated that the whole house reeked of feces and urine from the Tenants' pets. She submitted that feces was left on the floors and walls and the flooring had bubbled and separated due to the amount of urine. She referenced pictures that she submitted as documentary evidence to corroborate this damage, and she cited letters provided by witnesses corroborating the condition of the rental unit at the end of the tenancy. She stated that the floors were made of laminate, were in "good shape" at the start of the tenancy, and were approximately 6 years old when the tenancy started. She submitted a copy of an estimate to substantiate the cost of the repair.

In addition, she advised that she was seeking compensation in the amount of **\$2,940.00** for the cost to repair and repaint the walls. She stated that the Tenants' folding dog crate had damaged the walls, that there were many drywall chips, that there appeared to be black smears on the walls, that three major rooms required painting due to the Tenants' negligence, and that there were many nail holes in the walls. She referenced pictures that she submitted as documentary evidence to corroborate this damage, and she cited letters provided by witnesses corroborating the condition of the rental unit at the end of the tenancy. She stated that the walls were last painted around 2013. She submitted a copy of an estimate to substantiate the cost of the repair.

She also advised that she was seeking compensation in the amount of \$662.50 for the cost to clean the rental unit as the filth was astronomical and the rental unit was not left in a re-rentable condition. She stated that she hired a person to rectify these issues at a cost of \$25.00 per hour for a total of 26.5 hours; however, she only ended up paying this person \$18.00 per hour for the work, so she is seeking compensation in the amount of **\$477.00** for the cost to clean the rental unit. She referenced pictures that she submitted as documentary evidence to corroborate the condition of the rental unit, and she cited letters provided by witnesses corroborating this. She also submitted an invoice for the cleaning.

Finally, she advised that she was seeking compensation in the amount of **\$4,100.00** for April and May 2019 rental loss as the Tenants did not pay rent and simply gave up vacant possession of the rental unit. She stated that she was unable to afford the cost of repairs and consequently was not able to re-rent the rental unit. Therefore, she moved into the rental unit at the end of May 2019 instead.

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 Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day.

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 and provide the Tenants with a copy in accordance with the regulations. However, these sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent arrears and not solely damage claims, the Landlord still retains a right to claim against 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 receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that a forwarding address in writing was not provided to the Landlord, that she made this Application based on the address on the Tenants'

Application for Dispute Resolution, and that the Tenants signed for this package at that address. As the Landlord was entitled to claim against the security deposit still, and as she was not required to comply with Section 38 of the *Act* because a forwarding address in writing was not provided by the Tenants, I find that the doubling provisions do not apply to the security deposit.

With respect to the pet damage deposit, it can only be claimed against if there is damage due to pets. As the Landlord did advise of damage that was due to pets, the pet damage deposit can be claimed for as well. As such, I find that the doubling provisions do not apply to the pet damage deposit either.

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 Tenants 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 repairing the flooring of the rental unit. I find it important to note that she provided pictures of the condition of the rental unit, a copy of the inspection reports, witness letters, and an invoice of the estimated cost to repair these damages. Based on the evidence provided, I am satisfied that the Tenants did not leave the rental unit in a suitable condition when they gave up vacant possession of the rental unit. Therefore, I am satisfied that the Landlord has established grounds for this claim. Policy Guideline # 40 establishes the estimated useful life of this type of flooring as approximately 20 years. Based on the evidence and testimony provided by the Landlord, as she has already had use of the flooring for six years, I am satisfied that she should be awarded a monetary award in the amount of **\$1,200.00** to cover the costs associated with repairing the damage to the flooring.

With respect to the Landlord's claims for the cost associated with repairing damage to the walls and repainting, she has provided pictures of the condition of the rental unit, a copy of the inspection reports, witness letters, and an invoice of the estimated cost to repair these damages, as documentary evidence to support this claim. Based on the evidence provided, I am satisfied that the Tenants were responsible for the damage done to the rental unit. Therefore, I am satisfied that the Landlord has established grounds for this claim. Policy Guideline # 40 establishes the estimated useful life of paint is four years. Based on the testimony provided by the Landlord, as she has already had use of the paint for six years, I am satisfied that the useful life of the paint has been exceeded. However, based on the evidence submitted I am satisfied that the Tenants caused damage to the walls that exceeded general wear and tear and necessitated more work than just a simple repainting of the rental unit. As such, I find that the Landlord should be awarded a monetary award in the amount of **\$1,300.00** to cover the costs associated with repairing the damage to the walls and for repainting of the rental unit.

Regarding the Landlord's claims for the cost associated with cleaning the rental unit, she has provided pictures of the condition of the rental unit, a copy of the inspection reports, witness letters, and an invoice of the cost to clean the rental unit, as documentary evidence to support this claim. Based on the evidence and testimony provided, I am satisfied that she has substantiated this claim and I find that she should be awarded a monetary award in the amount of **\$477.00** to satisfy this claim.

Finally, with respect to the Landlord's claim for the cost associated with April and May 2019 unpaid rent, based on the undisputed evidence, the Tenants did not provide any written notice to end the tenancy and did not pay April or May 2019 rent. As such, I am satisfied that when the Tenants gave up vacant possession of the rental unit on May 1, 2019, they were at minimum, responsible for paying the rent from April 15 to May 14, 2019. As they ended their fixed term tenancy, as they left the rental unit in a condition that was not re-rentable, and as the Landlord could not re-rent it but chose to move in instead at the end of May 2019, I am satisfied that the Landlord suffered a rental loss equivalent to half a month's rent from May 15 to May 31, 2019. Consequently, I am satisfied that she established that she should be granted a monetary award in the amount of **\$3,075.00** to cover the rental loss from April 15 to May 31, 2019.

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. Pursuant to Sections 67 and 72

of the *Act*, I allow the Landlord to retain the security deposit and pet damage 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 Tenants to the Landlord

Cost of flooring repairs	\$1,200.00
Cost of wall repairs and painting	\$1,300.00
Cost of cleaning	\$477.00
April and half of May 2019 rent	\$3,075.00
Less security deposit	- \$950.00
Less pet damage deposit	- \$950.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$4,252.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$4,252.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: September 2, 2019

Residential Tenancy Branch