



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 May 22, 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*.

S.W. attended hearing as an agent for the Landlord; however, the Tenant did not make an appearance. S.W. provided a solemn affirmation.

S.W. advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail on May 29, 2019 but she did not have the registered mail tracking number with her. Based on this solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s 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 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.

S.W. advised that the tenancy started on September 1, 2017 for a fixed length of one year and then a lease extension was signed on September 1, 2018, for a fixed term of one year, ending July 31, 2019. However, the tenancy ended when the Tenant vacated the rental unit on May 16, 2019. She stated that rent was established at \$3,400.00 per month, due on the first day of each month. A security deposit of \$1,700.00 was also paid.

She advised that the Tenant emailed her on April 22, 2019 to end the tenancy and then texted her on May 15, 2019 asking for her to meet him to do a move-out inspection report.

She submitted that a move-in inspection report was conducted with the Tenant on September 1, 2017 and this signed report was submitted as documentary evidence. She advised that the Tenant participated in a move-out inspection report on May 16, 2019 and a signed copy of this report was submitted as documentary evidence.

She stated that the Tenant provided a forwarding address in writing on the move-out inspection report on May 16, 2019.

She advised that she was seeking compensation in the amount of **\$70.00** for the cost to clean the rental unit. She stated that the Tenant left the rental unit very dirty and the Landlord spent thousands of dollars to clean and repair damages. Despite the horrendous condition the Tenant left the rental unit, the Landlord is only seeking two hours of cleaning at \$35.00 per hour. She indicated that the deficiencies are marked on the move-out inspection report and this supports her claim. She did not, however, provide any invoice for the cost of the cleaner.

She also advised that she was seeking compensation in the amount of **\$3,400.00** for May 2019 rental loss as the Tenant did not pay May rent and simply gave up vacant possession of the rental unit on May 16, 2019. She stated that upon receiving the email from the Tenant with respect to ending his tenancy, she immediately advertised the rental unit and showed the rental unit many times. She was not able to re-rent the rental unit until June 1, 2019.

Finally, she advised that she was seeking compensation in the amount of **\$320.00** for the cost to steam clean the carpets. She stated that the carpets were shampooed before the Tenant moved in, that he did not shampoo them when he moved out, and that the Tenant was required to do so as per the tenancy agreement. She submitted that a company was hired to shampoo the carpets and the company charged \$80.00 per room for four rooms; however, she did not provide an invoice for this work. She cited the move-out inspection report as demonstrating the noted condition of the carpet.

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

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases 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 Tenant 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 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*.

The undisputed evidence is that a forwarding address in writing was provided to the Landlord on the move-out inspection report on May 16, 2019. As the Landlord was entitled to claim against the security deposit still and as she made the Application within 15 days of receiving the forwarding address in writing, I find that the doubling provisions do not apply to the security deposit.

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 cleaning the rental unit. S.W. has provided a copy of the inspection reports where the Tenant has signed to acknowledge that he agrees that the "report fairly represents the condition of the rental unit." Furthermore, the report clearly indicates that cleaning of the rental unit was required. Based on this evidence and S.W.'s solemnly affirmed testimony with respect to the cost of the cleaning, I am satisfied that she has substantiated this claim. Consequently, I find that the Landlord should be granted a monetary award in the amount of **\$70.00** to satisfy this claim.

With respect to the Landlord's claim for the cost associated with May 2019 unpaid rent, based on the undisputed evidence, the Tenant provided an emailed notice to end the

fixed term tenancy early and he 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 16, 2019, he was at minimum, responsible for paying the rent from May 1, 2019 to May 16, 2019. As he ended his fixed term tenancy early, as he left the rental unit in a condition that was not re-rentable, and as S.W. could not re-rent immediately but demonstrated that she mitigated the loss by re-renting it for June 1, 2019, I am satisfied that the Landlord suffered a rental loss equivalent to a full month's rent for May 2019. Consequently, I find that S.W. established that the Landlord should be granted a monetary award in the amount of **\$3,400.00** to cover the rental loss of May 2019.

Finally, regarding the Landlord's claim for the cost associated with carpet cleaning, S.W. has provided a copy of the inspection reports where the Tenant has signed to acknowledge that he agrees that the "report fairly represents the condition of the rental unit." Furthermore, the report clearly indicates that the carpets were stained, and S.W. testified that the tenancy agreement required the Tenant to clean the carpets at the end of the tenancy. Based on this evidence and S.W.'s solemnly affirmed testimony with respect to the cost of the carpet cleaning, I am satisfied that she has substantiated this claim. Consequently, I find that the Landlord should be granted a monetary award in the amount of **\$320.00** to rectify this claim.

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 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

Cost of cleaning	\$70.00
May 2019 rent	\$3,400.00
Carpet cleaning	\$320.00
Less security deposit	- \$1700.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,190.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,190.00** 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: September 6, 2019

Residential Tenancy Branch