



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing involved cross applications made by the parties. On July 12, 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 retain the security deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On July 18, 2019, this Application was set down for a participatory hearing on October 28, 2019 at 1:30 PM.

On July 17, 2019, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act*. On July 23, 2019, this Application was set down to be heard as a cross-application with the Landlord’s file.

The Landlord attended the hearing. Both Tenants attended the hearing with M.B. attending as an advocate for the Tenants. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on July 18, 2019 and the Tenants confirmed receipt of these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing and evidence packages.

Tenant S.W. advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on July 24, 2019 and the Landlord confirmed receipt of this

package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with 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 compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recovery of the filing fee?
- Are the Tenants entitled to a return of double the security deposit?

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 August 3, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on July 2, 2019. Rent was established at \$800.00 per month, due on the first of each month. A security deposit of \$400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties agreed that a move-in inspection report was not conducted at the start of the tenancy. The Landlord advised that a move-out inspection report was not conducted because the Tenants did not attend on July 2, 2019, the date they designated to conduct the report.

All parties agreed that the Tenants advised the Landlord, in writing on May 24, 2019, that they would be vacating the rental unit by July 2, 2019. The Tenants' forwarding address was also provided in this letter.

The Landlord advised that she was seeking compensation in the amount of **\$39.54** for the cost of a gallon of paint, **\$6.29** for the cost of paint tape, and **\$10.00** for the cost of paint supplies as the Tenants left large scratches on the walls. The walls needed to be repaired and re-painted to return the rental unit to a re-rentable state. She referenced pictures submitted as documentary evidence, and she cited the receipts submitted to support these claims.

Tenant S.W. advised that "from what he could recall", this was general wear and tear from having lived there for 10 months. He stated that these were minor paint scrapes from moving furniture and that apart from this, there was no other damage.

The Landlord replied that she gives all new tenants felt protection for their furniture and that this damage was significant as the scrapes were three to four feet in length.

The Landlord advised that she was seeking compensation in the amount of **\$20.16** for the cost to develop photographic evidence to submit to this file; however, she was informed that there are no provisions in the *Act* to cover these costs. As such, this claim was dismissed in its entirety.

She advised that she was seeking compensation in the amount of **\$22.37** for the cost to replace a broken shower rod. She stated that when she went through the rental unit, the shower rod was leaning on the wall and when she put a shower curtain on it, she realized that it was broken. She submitted a receipt for the cost to replace this item.

Tenant S.W. acknowledged that they did damage this item but forgot to inform the Landlord of this.

The Landlord advised that she was seeking compensation in the amount of **\$25.00** for the cost to replace a space heater that was taken from the rental unit. She stated that the Tenants were provided with two space heaters at the start of the tenancy and she provided a copy of a text message conversation with the Tenants, as documentary evidence, confirming that two space heaters were provided. She submitted that only one space heater was left at the end of the tenancy.

Tenant S.W. advised that they had many people helping them move and it is possible that someone accidentally took one by accident. He stated that he does not know where it might be stored, but if found, he will return it.

The Landlord advised that she was seeking compensation in the amount of **\$32.00** for the cost of cleaning supplies, **\$3.50** for the cost to dump refuse left behind in the rental unit, and **\$375.00** for the cost to clean the rental unit. She stated that the Tenants left the rental unit in a “disgusting” state and the whole rental unit required general cleaning. She stated that she spent 15 hours of her own time cleaning, at a cost of \$25.00 per hour, to return the rental unit to a re-rentable state. She referenced pictures submitted as documentary evidence to support this position.

Tenant S.W. advised that they ran out of time to clean the rental unit and acknowledged that the condition they left the premises in was not a re-rentable state. He stated that had the Landlord hired a cleaning company, the cost of the cleaning supplies would have been included in the hourly rate.

The Landlord advised that she was seeking compensation in the amount of **\$17.50** for the cost to repair trim on a window that was ripped off. She stated that she hired a handyman to fix this issue and he charged for a half an hour of labour to rectify this issue. She referenced pictures submitted as documentary evidence of this damage.

Tenant S.W. reiterated that the Landlord did not conduct the required move-in inspection report and the window was like this at the start of the tenancy. As well, he stated that from the evidence, it does not appear as if it would cost this much to fix.

The Landlord advised that most companies would charge a one hour minimum so this price is extremely reasonable. As well, she stated that she would not rent out the premises with trim hanging from the window.

Finally, the Landlord advised that she was seeking compensation in the amount of **\$58.70** for the cost of rent and utilities for July 1 and 2, 2019 rent and utilities. As well, she was seeking compensation in the amount of **\$748.20** for rent arrears from July 3 to August 1, 2019 as the Tenants gave up vacant possession of the rental unit contrary to the *Act* and as a result, she suffered a rental loss. Furthermore, due to the condition that the Tenants left the rental unit in, she would have been unable to re-rent it until mid-July at the earliest, regardless.

Tenant S.W. advised that it was his understanding that because the tenancy started on August 3, 2019, they were entitled to end their tenancy effective for July 2, 2019. Otherwise, they had no further submissions.

M.B. advised that the Landlord should have mitigated her loss and attempted to re-rent the rental unit as soon as possible.

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. However, these sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent and utilities owing, which are not 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 receives the Tenants' 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 Tenants, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was served to the Landlord prior to the tenancy ending. Furthermore, the Landlord made her Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the deposit still, and as she complied with Section 38(1) of the *Act* by making a claim within 15 days of the tenancy ending, I find that she has complied with the requirements of the *Act* and therefore, the doubling provisions do not apply. As such, the Tenants' claim for a return of double the deposit is dismissed in its entirety.

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 Landlords’ claim for the damage to the rental unit, the first one I will address is the cost associated with repairing and painting the rental unit. While the Landlord did not complete a move-in or move-out inspection report, which are requirements of the *Act*, a preponderance of evidence supporting a certain position on a balance of probabilities, can also be considered when assessing the legitimacy of a claim. When weighing the evidence before me, I have pictures submitted by the Landlord of the condition of the walls that illustrate lengthy gouges or scratches along the walls. Comparatively, I have Tenant S.W.’s unconvincing testimony that from what he “can recall”, this was simply general wear and tear as a result of them moving furniture. Based on the pictures, I find from the size and significance of the damage, that it is not likely that this damage was present at the start of the tenancy. Furthermore, Tenant S.W. acknowledged to causing this damage. As I am not satisfied that this damage would be considered ordinary wear and tear and appears to me to be significant enough damage that requires repairing, I am satisfied that the Landlord has substantiated this claim. Consequently, I find that the Landlord should be granted a monetary award in the amount of **\$55.83** to satisfy these claims.

With respect to the Landlord’s claims pertaining to the shower rod and space heater, as Tenant S.W. acknowledged that they damaged the shower rod and likely took the space heater, I am satisfied that the Landlord should be granted monetary awards in the amount of **\$22.37** and **\$25.00** to replace these items.

Regarding the Landlord’s claims, for cleaning the rental unit, as Tenant S.W. acknowledged that they ran out of time to clean and that they did not dispute the condition they left the rental unit in, and in combination with the Landlord’s pictures of the rental unit at the end of the tenancy, I am satisfied that the Landlord has substantiated that it would have taken a substantial amount of time to return the rental unit to a re-rentable state. Consequently, I am satisfied that she has established that she should be granted a monetary award in the amount of **\$410.50** for the costs associated with cleaning the rental unit.

With respect to the Landlord’s claim for the broken window trim, while I agree that the Landlord did not conduct any condition inspection reports as is required by the *Act*, a party should not necessarily suffer a loss due to negligent damage if it can be established on a balance of probabilities that this was intentionally caused by the

Tenants. Even though the lack of condition inspection reports reduces the weight that can be placed on the Landlord's claim for this damage, when reviewing the totality of the evidence before me and the undisputed condition that the Tenants left the rental unit in at the end of the tenancy, I find it more likely than not that the Tenants caused this damage during the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$17.50** to cover the cost of this repair.

Finally, with respect to the Landlord's compensation request for the rent and utilities owed, it was explained to the Tenants during the hearing that based on their rent being due on the first day of each month, their rental period on a month to month tenancy would be from the first of the month to the last day of the month. As well, they are required to give one, whole month's notice and any incorrect effective dates in a notice would automatically self-correct pursuant to Section 53 of the *Act*. Based on their notice to end tenancy dated May 24, 2019, they were advised that the date they ended the tenancy would have automatically self corrected to July 31, 2019 and they would be responsible for the entire month of rent. Furthermore, there is no requirement for the Landlord to mitigate her loss when the Tenants vacate the rental unit early on a month to month tenancy. Even if the Landlord were to make attempts at re-renting the premises, given the acknowledged condition that the Tenants left the rental unit in, the Landlord would not have been able to re-rent it quickly in any event. As I am satisfied that the Tenants gave up vacant possession of the rental unit contrary to the *Act* and the Landlord suffered a loss of rent and utilities owed as a result of this, I find that the Landlord should be granted a monetary award in the amount of **\$806.90** to satisfy these losses.

As the Landlord was successful in this Application, I find that she is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the 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

Costs associated with repairs and repainting	\$55.83
Shower rod	\$22.37
Space heater	\$25.00

Costs associated with cleaning	\$410.50
Window trim repair	\$17.50
Outstanding rent and utilities	\$806.90
Filing fee	\$100.00
Security deposit	-\$400.00
TOTAL MONETARY AWARD	\$1,038.10

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,038.10** 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: October 30, 2019

Residential Tenancy Branch