



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOMUS MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

MNDCL-S, MNDL, FFL

Dispute Codes

Introduction

On August 9, 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 and pet damage 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*.

R.Y. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

R.Y. advised that the Notice of Hearing and evidence package was served to the Tenant by Xpresspost on August 21, 2019 and he submitted a copy of the tracking history that indicated that this package was delivered. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package.

He stated that he served the evidence package to the Tenant by registered mail on October 17, 2019 and he submitted a copy of the tracking history that indicated that this package was delivered. Based on this undisputed testimony, and in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Tenant was served with the 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 and pet damage deposit towards these debts?
- Is the Landlord entitled to recovery of 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.

R.Y. stated that the tenancy started on December 1, 2013 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on July 31, 2019. He did not recall the amount of rent that was owed each month; however, it was due on the first day of each month. A security deposit of \$442.50 and a pet damage deposit of \$442.50 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

R.Y. advised that a move-in inspection report was conducted before the start of the tenancy on November 30, 2013 and a copy of the signed report was submitted as documentary evidence. He stated that a move-out inspection report was not conducted as the Tenant did not attend the date designated to conduct the report as per the Landlord's Notice of Final Opportunity to conduct the inspection.

He also advised that the Tenant provided her forwarding address in her letter to end the tenancy, dated June 23, 2019.

R.Y. advised that the Landlord was seeking compensation in the amount of **\$1,709.51** for the cost to replace the carpets in four rooms as the Tenant's pet damaged them beyond repair or cleaning. He stated that the carpets were brand new at the start of the tenancy, he referenced before and after pictures submitted as documentary evidence, and he cited the receipt submitted to support this claim. He stated that the carpets were so saturated with urine that the carpet backing was rotting.

R.Y. advised that the Landlord was seeking compensation in the amount of **\$1,148.00** for the cost to replace the stove and the dishwasher. He stated that the stove was brand new at the start of the tenancy but was damaged to the point of needing replacement. He submitted that the Tenant used the stove in a manner that caused it to rust and it could not be cleaned. He provided little detail with respect to the damage to the stove but confirmed that it was still functioning. He referenced pictures, submitted as documentary evidence, to support his submissions with respect to the condition of the stove at the end of the tenancy.

In addition, he advised that the dishwasher was brand new at the start of the tenancy and that the Tenant had continuously been misusing the dishwasher by leaving

substantial amounts of food on her plates. He submitted reports from an appliance repair person regarding repeated repair bills; however, the Tenant did not pay these bills. He referenced pictures, submitted as documentary evidence, to support his submissions with respect to the condition of the dishwasher and he stated that the dishwasher was damaged beyond repair.

He advised that the Landlord was seeking compensation in the amount of **\$89.25** for the cost to repair the dishwasher, prior to it being completely damaged. He stated that a repair person had been sent to fix the plugged dishwasher due to the buildup of food particles. However, the Tenant never paid this repair bill. He referenced the report submitted from the appliance repair person to support this claim.

He also advised that the Landlord was seeking compensation in the amount of **\$400.00** for the cost of cleaning as the Tenant left the rental unit in a filthy and un-rentable state. The Tenant did not make any attempts to clean the rental unit, every surface was left dirty, and food was left in the fridge and drawers. He stated that two cleaners spent a total of 20 hours cleaning, at a cost of \$20.00 per hour, to return the rental unit to a rentable condition. He referenced pictures and an invoice, submitted as documentary evidence, to support these claims.

Finally, he advised that the Landlord was seeking compensation in the amount of **\$75.00** for the cost of yard cleanup and garbage disposal as the Tenant left refuse on the property at the end of the tenancy. He stated that he dealt with this garbage himself; however, he did not have a receipt for the disposal. He referenced a picture of the debris that was left behind.

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 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 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 Tenant, 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 the Application within the 15-day frame to claim against the deposits. As the Landlord was entitled to claim against the deposits still, and as he complied with Section 38(1) of the *Act* by

making a claim within 15 days of the tenancy ending, I find that he has complied with the requirements of the Act and therefore, the doubling provisions do not apply.

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 claim for the damage to the rental unit, the first one I will address is the cost associated with replacing the carpet. When weighing the evidence before me, I have pictures submitted by the Landlord of the condition of the carpet that illustrate significant stains, damage, and uncleanliness that are clearly beyond normal wear and tear. Based on the undisputed testimony of R.Y., I am satisfied that the carpet was brand new at the start of the tenancy. As I am not satisfied that the damage to the carpet would be considered ordinary wear and tear and appears to me to be significant enough that required the carpet to be replaced in its entirety, I am satisfied that the Landlord has substantiated this claim. I find it important to note that Policy Guideline # 40 outlines that the average useful life of a carpet is approximately 10 years. However, as the carpet was approximately six years old already, I find that the Landlord should be granted a monetary amount equivalent to the value of the current state of the carpet, had it not been damaged. Therefore, I grant the Landlord a monetary award in the amount of **\$850.00** to satisfy this claim.

Regarding the Landlord's claims for compensation for the stove, I am satisfied from the pictures that the Tenant misused and damaged the stove. However, it is not clear to me how the Tenant could have caused the stove to rust, and R.Y. provided very little detail about this issue. As he advised that the stove was still functioning and as it appears from the evidence that the stove was only in need of significant cleaning, it is not clear to me why it was necessary to replace it in its entirety. Consequently, I am not satisfied that R.Y. has established this claim fully.

With respect to the damaged dishwasher, when weighing the evidence before me, I find it important to note that the only picture of the dishwasher R.Y. provided was of the outside of the dishwasher. While he has submitted reports from a repair person confirming that the Tenant had been plugging the dishwasher with food, I do not find that R.Y. has provided sufficient evidence to support that the dishwasher required complete replacement. Consequently, based on the evidence that R.Y. provided with respect to these two claims, I find that the damage to these appliances caused by the Tenant's negligence would amount to a monetary award of **\$400.00**.

In addition, based on the undisputed evidence, I am satisfied that the Tenant did not pay the repair bill for the dishwasher. As such, I also find that the Tenant should be responsible for the repair bill of **\$89.25**.

Regarding the Landlord's claim for cleaning, I am satisfied of the undisputed evidence that the Tenant did not clean the rental unit and left it in a condition that required significant cleaning. Consequently, I am satisfied that the Landlord has substantiated this claim. Ultimately, I find that the Landlord should be granted a monetary award in the amount of **\$400.00** to bring the rental unit back to a re-rentable condition.

Finally, regarding R.Y.'s claim for yard cleanup and garbage disposal, I am satisfied from the undisputed evidence provided that there were items left at the end of tenancy which required R.Y. to have to dispose of them. As such, I find that the Landlord should be granted a monetary award in the amount of **\$75.00** to satisfy this claim.

As the Landlord was successful in this Application, I find that he 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 and pet damage 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 Tenant to the Landlord

Costs associated with replacing the carpet	\$850.00
Costs associated with damage to the stove and dishwasher	\$400.00
Repair and maintenance cost of the dishwasher	\$89.25
Costs associated with cleaning	\$400.00
Costs associated with refuse removal	\$75.00
Filing fee	\$100.00
Security deposit	-\$442.50
Pet damage deposit	-\$442.50
TOTAL MONETARY AWARD	\$1,029.25

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,029.25** 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: December 4, 2019

Residential Tenancy Branch