



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CINNABAR BROWN HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

On August 13, 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*.

The Landlord attended the hearing late, at 1:40 PM; however, the Tenant did not attend the hearing at all. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on August 21, 2019 (the registered mail tracking number is noted on the first page of this decision). Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed.

She stated that she amended her claim to increase the amount of monetary compensation she was seeking; however, she did not serve this Amendment to the Tenant. Regardless, she stated that she would still like to proceed with the hearing based on the amount of compensation she was seeking on the original Application.

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?

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 March 16, 2019 as a fixed term tenancy of one year, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or about the middle of July 2019. She stated that rent was established at \$2,285.00 per month and was due on the first day of each month. A security deposit of \$1,142.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that a move-in inspection report was conducted at the start of the tenancy on March 16, 2019 and a copy of the signed report was submitted as documentary evidence. She stated that a move-out inspection report was not conducted as the Tenant vacated the rental unit without notice and she was only alerted to his moving by the neighbour. She conducted the move-out inspection in his absence, on July 25, 2019.

She stated that the Tenant provided his forwarding address via text on July 30, 2019.

She advised that she was seeking compensation in the amount of **\$500.00** for the cost of liquidated damages, per the tenancy agreement, as the Tenant ended the fixed term early. She stated that she advertised the vacant rental unit on two different websites at the end of July 2019, after she had finished cleaning the rental unit. She submitted that as part of re-renting the unit, she answered inquiries and she screened, interviewed, and showed the rental unit to prospective tenants.

She advised that she was seeking compensation in the amount of **\$150.00** for the cost to clean the carpet. She referenced two receipts of the carpet cleaner rental and an

invoice for the cleaning, and these were submitted as documentary evidence to support her claim.

She also advised that she was seeking compensation in the amount of **\$160.00** 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, the whole house was dirty, and the Tenant left garbage behind. She was not sure how many hours the cleaner spent cleaning, however. She referenced pictures and an invoice, submitted as documentary evidence, to support these claims.

The Landlord advised that she was seeking compensation in the amount of **\$590.00** for the cost to repair many screw holes in the walls and then repaint due to this damage. She was not sure when the walls were last painted. She referenced several pictures and an invoice, submitted as documentary evidence, to support these claims.

She advised that she was seeking compensation in the amount of **\$100.00** for the cost to repair the lawn as the Tenant had an outdoor pool, which destroyed a portion of the lawn. She referenced pictures and an invoice, submitted as documentary evidence, to support this claim.

She advised that she was seeking compensation in the amount of **\$1,142.50** for the rental loss she suffered from the Tenant breaking the fixed term tenancy. Due to the condition that the Tenant left the rental unit and as she was not able to find a new tenant until August 15, 2019, she was seeking compensation for the portion of August 2019 rent that she lost.

Finally, she advised that she was seeking compensation in the amount of **\$581.92** for the cost of utilities that the Tenant did not pay. She stated that the tenancy agreement stipulates that the Tenant is responsible for the cost of the utilities. She referenced the utility bills, submitted as documentary evidence, to support her claims.

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 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 the forwarding address in writing was provided to the Landlord on July 30, 2019. Furthermore, the Landlord made the Application within the 15-day timeframe 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 and receiving the forwarding address, I find that she 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 the liquidated damages fee. Based on the undisputed evidence, I am satisfied that there was a liquidated damages clause in the tenancy agreement and that the Tenant vacated the rental unit prior to the fixed term ending. Furthermore, I am satisfied that the Landlord made attempts to mitigate her loss as quickly as possible after discovering that the Tenant had given up vacant possession of the rental unit. Consequently, I am satisfied that the Landlord has substantiated this claim. As such, I find that the Landlord should be granted a monetary award in the amount of **\$500.00** to satisfy this claim.

With respect to the Landlord's claim for cleaning the carpet, when weighing the evidence before me, I have receipts submitted by the Landlord of the carpet cleaning rental and her undisputed testimony. Based on this, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$150.00** to satisfy this claim. 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 **\$160.00** to bring the rental unit back to a re-rentable condition.

Regarding the Landlord's claims for compensation to repair wall damage and repaint, I am satisfied from the pictures that the Tenant caused damage to the walls that were beyond ordinary wear and tear that necessitated the Landlord to fix these issues. Consequently, I am satisfied that the Landlord has established this claim and that she should be granted a monetary award in the amount of **\$590.00**.

With respect to the damaged lawn, based on the picture and the testimony of the Landlord, I find that she has provided sufficient evidence to support that this damage required repair. Consequently, I am satisfied of the cost to repair this damage and that the Landlord should be granted a monetary award in the amount of **\$100.00**.

Regarding the Landlord's claim for compensation of rental loss for half of August 2019, I am satisfied from the undisputed evidence that the Tenant gave up vacant possession of the rental unit prior to the end of the fixed term tenancy and that the Landlord was only able to re-rent the unit on August 15, 2019. As such, I am satisfied that the Landlord suffered a rental loss of a half month's rent. Consequently, I find that the Tenant should be responsible for the lost rent in the amount of **\$1,142.50**.

Finally, regarding the Landlord's claim for outstanding utilities, I am satisfied from the undisputed evidence provided that the Tenant was responsible for utilities and that they were unpaid. As such, I find that the Landlord should be granted a monetary award in the amount of **\$581.92** to satisfy this claim.

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 Tenant to the Landlord

Liquidated damages	\$500.00
Carpet cleaning	\$150.00

Cleaning	\$160.00
Costs associated with repairing and repainting walls	\$590.00
Costs associated with lawn repair	\$100.00
August 2019 rental loss	\$1,142.50
Utilities owing	\$581.92
Filing fee	\$100.00
Security deposit	-\$1,142.50
TOTAL MONETARY AWARD	\$2,181.92

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,181.92** 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 6, 2019

Residential Tenancy Branch