



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On October 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 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*.

K.I. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on October 25, 2019 and the Tenant confirmed that she received this package. 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 and evidence package.

The Tenant confirmed that she did not submit any evidence for consideration on this file.

The Tenant also requested an adjournment due to significant circumstances that had happened recently in her life; however, she changed her mind and elected to proceed with the hearing.

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.

All parties agreed that the tenancy started on May 1, 2018 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around October 7, 2019. Rent was established in the amount of \$850.00 per month, due on the first day of each month. A security deposit of \$425.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties advised that a move-in inspection report was conducted before the start of the tenancy on April 26, 2018 and a copy of the signed report was submitted as documentary evidence. K.I. stated that a move-out inspection report was not conducted as the Tenant emailed the Landlord on or around October 6, 2019 to end her tenancy and gave up vacant possession of the rental unit on or around October 7, 2019.

The Tenant advised that she provided her forwarding address by email on or around October 16, 2019.

K.I. advised that the Landlord was seeking compensation in the amount of **\$210.00** for the cost of cleaning as the Tenant left the rental unit in a filthy and un-rentable state. She stated that the Tenant did not make any attempts to clean the rental unit, that her and her mother scrubbed every floor, wiped every wall, cleaned every window, and cleaned the bathroom and the fridge. She stated that it took her and her mother each, a total of seven hours cleaning, at a cost of \$15.00 per hour, to return the rental unit to a re-rentable condition. She referenced the outline of her cost submitted as documentary evidence to support these claims.

The Tenant stated that she was never offered an opportunity to conduct a move-out inspection. However, she acknowledged that she “did not clean to the extent it should have been cleaned” as she was given a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and her main concern was to get her son out of the rental unit.

K.I. advised that the Landlord was seeking compensation in the amount of **\$349.97** for the cost to clean the carpets at the end of the tenancy. She stated that the carpets are always professionally cleaned for the start of each tenancy as the tenancy agreement requires each tenant to professionally clean the carpets at the end of the tenancy. She referenced the invoice for professional carpet cleaning as documentary evidence to support this claim.

The Tenant made no objections to this claim as she acknowledged that the carpet was damaged and dirty.

Finally, K.I. advised that the Landlord was seeking compensation in the amount of **\$2,100.00** for the cost of rent arrears amounting to \$400.00 for August 2019, \$850.00 for September 2019, and \$850.00 for October 2019.

The Tenant acknowledged that she owed \$400.00 for August 2019, and \$850.00 for September 2019; however, it was her belief that she was not responsible for October 2019 rent as she gave up vacant possession of the rental unit due to being served the Notice.

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 was provided to the Landlord by email on or around October 16, 2019. Furthermore, the Landlord made the 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 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 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 **\$210.00** to bring the rental unit back to a re-rentable condition.

With respect to the Landlord's claim for compensation for the carpet cleaning, I am satisfied from the undisputed evidence that the Tenant left the carpet dirty. Consequently, based on this testimony, I find that the damage to the carpet caused by the Tenant's negligence would amount to a monetary award of **\$349.97**.

Finally, regarding K.I.'s claim for rent arrears, I am satisfied from the undisputed testimony that \$400.00 for August 2019 rent and \$850.00 for September 2019 rent is owed. While it was the Tenant's belief that she should not be responsible for October 2019 rent, as she was served the Notice due to non-payment of rent and as a result, the Landlord suffered a rental loss, I am satisfied that she is also responsible for this rent as well. As such, I find that the Landlord should be granted a monetary award in the amount of **\$2,100.00** 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

Costs associated with cleaning	\$210.00
Costs associated with carpet cleaning	\$349.97
Rent arrears	2,100.00
Filing fee	\$100.00
Security deposit	-\$425.00
TOTAL MONETARY AWARD	\$2,334.97

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,334.97** 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 13, 2019

Residential Tenancy Branch