



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TEIVAH HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

On October 2, 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.M. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. He advised that he did not want to amend the name of the Respondent on the Application.

He advised that the Tenant had not provided a forwarding address and is currently subject to a Foreclosure Action regarding a separate property. He stated that the Tenant has been avoiding service of the Foreclose Action documents and the Supreme Court granted the lender an Order to serve the Tenant those documents through substitutional service. As a result of this evasion of service, the Landlord made a request through the Residential Tenancy branch for Substituted Service of the Notice of Hearing and evidence package.

This request was granted, and J.M. advised that the Notice of Hearing and evidence package was served to the Tenant in accordance with the Substituted Service decision, dated November 8, 2019. He advised that these documents were served by registered mail to two known addresses of the Tenant, posted to the door of those two known addresses, and emailed to the Tenant. He provided affidavits of service, registered mail tracking numbers, and a read receipt that confirms that the Tenant received the emailed documents (the registered mail tracking numbers are listed on the first page of this decision). Based on this undisputed evidence, as these documents were served and in accordance with Sections 89 and 90 of the *Act* and the Substituted Service Order, I am satisfied that the Tenant was served with the Notice of Hearing and evidence package.

The pictures that J.M. referred to as evidence did not appear to be submitted to the Residential Tenancy Branch; however, J.M. advised that these were submitted prior to the hearing. As I was unable to view the relevant evidence and as I was satisfied that the Tenant was served this evidence, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of these pictures,

that are related to the subject of this dispute, were requested to be provided from the Landlord as it was essential to the matter at hand. These pictures were provided by J.M. after the hearing. These pictures were accepted and will be considered when rendering this decision.

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 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.

J.M. advised that the tenancy started on February 1, 2018 and that the tenancy ended when the Tenant was physically removed from the rental unit by a bailiff on October 1, 2018. Rent was established in the amount of \$6,000.00 per month and was due on the first day of each month. A security deposit of \$3,000.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He advised that he does not believe that a move-in inspection report was conducted. In addition, he stated that a move-out inspection report was not conducted.

He also advised that the Tenant never provided a forwarding address in writing to the Landlord.

J.M. advised that the Landlord was seeking compensation in the amount of **\$18,000.00** for the cost of lost rent for the months of October, November, and December 2018. He stated that the Landlord received an Order of Possession on April 5, 2018 and served it on the Tenant on April 9, 2018. However, the Tenant challenged this decision and once his application was dismissed, the Landlord was finally able to obtain a Writ of Possession on September 26, 2018. As the Tenant did not vacate the rental unit, he was forcibly removed from the rental unit by a bailiff on October 1, 2018.

The Landlord made attempts to re-rent immediately; however, given the high cost of rent, there were few prospective tenants. J.M. submitted copied of advertisements for the rental unit and provided email exchanges from some interested tenants, but these tenants were not willing to pay close to the amount of rent being sought. Eventually, the

Landlord found a new tenant as of January 8, 2019. A copy of this new tenancy agreement, the advertisements, and the email exchanges between the parties were submitted, as documentary evidence, to support this claim.

J.M. advised that the Landlord was seeking compensation in the amount of **\$1,531.69** for the cost to paint the rental unit that was brand new at the start of the tenancy. To explain the extent of the damage and the requirement to re-paint, he stated that he “understood” that the walls were scuffed but he was “not sure why” the Landlord repainted the rental unit, other than his speculation that “maybe” it was due to the Landlord’s desire to restore the rental unit to its original condition. He referenced the pictures and the invoice for the cost of painting, submitted as documentary evidence, to support this claim.

He advised that the Landlord was seeking compensation in the amount of **\$134.40** for the cost to change the locks as the Tenant did not return the keys to the rental unit at the end of tenancy. He referenced the invoice for the locksmith, submitted as documentary evidence, to support the cost of this expense.

He advised that the Landlord was seeking compensation in the amount of **\$887.25** for the cost to repair drywall in the rental unit. He stated that from what he was advised of by the Landlord with respect to the damage, that it was “just nail holes” in the walls. He referenced the pictures and the invoice for the cost of drywall repair, submitted as documentary evidence, to support this claim.

He also advised that the Landlord was seeking compensation in the amount of **\$854.44** and **\$630.00** for the cost of cleaning as the Tenant left the rental unit in an un-rentable state. He stated that the Tenant was forcibly evicted by a bailiff through a Writ of Possession, and it was obvious that he did not make any attempts to pack or clean the rental unit. However, J.M. could not elaborate on the actual condition that the rental unit was left in or specifically explain the extent of the required cleaning, though he read out the details on one of the cleaning invoices of what was cleaned. In addition, he could not clarify why the Landlord used two different cleaning companies to complete this work. He referenced the pictures and the invoices, submitted as documentary evidence, to support these claims.

He advised that the Landlord was seeking compensation in the amount of **\$284.55** for the cost to replace and recode the garage door openers as the Tenant did not return the access devices to the rental unit at the end of the tenancy. He suspected that the Tenant illegally re-rented out the rental unit and gave these access devices away to these people. He referenced the invoice, submitted as documentary evidence, to support the cost of this expense.

Finally, he advised that the Landlord was seeking compensation in the amount of **\$525.00** for the cost of removing and disposing of a hot tub that the Tenant installed without permission. He advised that the Tenant stated that he would remove the hot tub;

however, he did not. As this was left on the property at the end of the tenancy, the Landlord had it assessed, and it was determined to be worthless. As a result, the Landlord had this item removed and disposed of. He referenced the pictures and the invoice, submitted as documentary evidence, to support the cost of this expense.

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.

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 rent arrears, I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the above, the undisputed evidence is that the Tenant was forcibly evicted from the rental unit by a bailiff. When reviewing the Landlord's evidence with respect to their actions after they received vacant possession of the rental unit, I am satisfied that the Landlord made attempts to re-rent the rental unit as quickly as possible after October 1, 2018. As the Landlord re-rented the rental unit on January 8, 2019, I am satisfied that the Tenant is responsible for the rental loss that the Landlord suffered as a result of the Tenant's actions. Consequently, I grant the Landlord a monetary award in the amount of **\$18,000.00** to satisfy the Landlord's loss of rent owing for the months of October, November, and December 2018.

Regarding the Landlord's claims for compensation for the cost of repainting the rental unit, I am not satisfied from the pictures that the Landlord established that the rental unit needed to be repainted. The Tenant is required to leave the rental unit in as close to the same condition as it was originally rented, less reasonable wear and tear which is the natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion. As there was no evidence of any damage to the paint other than some suggested "scuffing", I do not find it reasonable that the only purpose for the Landlord repainting was to restore it to brand new condition. As the Landlord has not demonstrated that there was more than

reasonable wear and tear on the walls, I am not satisfied that the Landlord has established this claim. As such, I dismiss it in its entirety.

With respect to the Landlord's claim for the cost to change the locks, based on the undisputed evidence before me, I am satisfied that the Tenant did not return the keys and that the Tenant should be responsible for this cost. As such, I am satisfied that the Landlord has substantiated this claim and should be granted a monetary award in the amount of **\$134.40** to satisfy this claim.

Regarding the Landlord's claim for the cost to repair drywall in the rental unit, I find it important to note that Policy Guideline # 1 states that, "The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage and the tenant is responsible for all deliberate or negligent damage to the walls." As the Landlord's evidence does not depict an excessive number of nail holes, or any damage to the walls, it is not clear to me how the Landlord has justified this cost. As such, I am not satisfied that the Landlord has established this claim and I dismiss it in its entirety.

Regarding the Landlord's claim for cleaning, I am satisfied of the undisputed evidence that the Tenant was forcibly removed by a bailiff and likely did not clean the rental unit as thoroughly as required. However, the Landlord has provided little, compelling evidence and inadequate explanation of the actual condition that the rental unit was left in. In addition, there was only a simple, generic description of what one cleaning company did and no explanation of why the Landlord utilized two different cleaning companies for the work. Furthermore, the Landlord has submitted insufficient evidence to substantiate why it took these companies a substantial number of hours in total to clean the rental unit. Consequently, while I have taken into account the circumstances that the Tenant was required to vacate the rental unit, based on the Landlord's scant evidence in the pictures, I am satisfied that the Landlord has only substantiated a portion of this claim. Ultimately, I find that the Landlord should be granted a monetary award in the amount of **\$500.00** to bring the rental unit back to a re-rentable condition.

With respect to the Landlord's claim for the cost of replacing and recoding the garage door openers, based on the manner with which the Tenant was evicted, I am satisfied that the Tenant likely did not return these access devices. As such, I am satisfied that the Landlord has substantiated this claim and should be granted a monetary award in the amount of **\$284.55** to satisfy this claim.

Finally, regarding the Landlord's claim for the removal and disposal of the hot tub, I am satisfied from the undisputed evidence provided that the Tenant left an unauthorized hot tub at the end of tenancy, which required disposal of. As such, I find that the Landlord should be granted a monetary award in the amount of **\$525.00** to satisfy this claim.

As the Landlord was partially successful in this Application, 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 grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Rent arrears for October, November, and December 2018	\$18,000.00
Costs associated with changing the locks	\$134.40
Costs associated with cleaning	\$500.00
Costs associated with replacing and recoding garage door openers	\$284.55
Costs associated with removing and disposing of hot tub	\$525.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$19,543.95

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$19,543.95** 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: February 10, 2020

Residential Tenancy Branch