



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

On October 15, 2019, the Landlords 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 apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 25, 2019, the Landlords amended their Application to correct Landlord H.D.’s name.

Landlord R.D. attended the hearing; however, neither Tenant attended the 21-minute hearing. All parties provided a solemn affirmation.

She advised that each Tenant was served a Notice of Hearing and evidence package, and a copy of the Amendment, on October 25, 2019, by registered mail to the forwarding address that the Tenants provided via text on September 29, 2019 (the registered mail tracking numbers are listed on the first page of this decision). The tracking history indicated that these packages were both signed for on October 28, 2019. Based on this undisputed evidence, as these documents were served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that each Tenant was deemed to have received the Notice of Hearing and evidence package, and the Amendment.

All parties 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

- Are the Landlords entitled to a Monetary Order for compensation?

- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover 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.D. advised that the tenancy started on December 15, 2018 and ended when the Tenants gave up vacant possession of the rental unit on September 15, 2019. Rent was established at \$1,350.00 per month, due on the first day of each month. A security deposit of \$680.00 was also paid. This amount exceeded the amount allowed to be collected by the Landlords, as per Section 19 of the *Act*, because they could not provide the Tenants with correct change. As a note, the Landlords are cautioned that they are only permitted to collect a security or pet damage deposit that is not greater than the equivalent of $\frac{1}{2}$ of one month's rent. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that a move-in inspection report was not conducted as the rental unit was brand new at the start of the tenancy and the Tenants were the first ever occupants of the rental unit. She stated that a move-out inspection report was not conducted with the Tenants as they did not respond to the Landlords' request to participate in one.

She also stated that the Tenants provided a forwarding address on September 29, 2019 via text message, and she read out the contents of that message.

She advised that the Tenants only paid \$800 for August 2019 rent and she referenced an electronic transfer payment that was submitted as documentary evidence to support this position. In addition, she stated that the Tenants did not pay any rent for September 2019. As a result, the Landlords are seeking compensation in the amount of **\$1,900.00** for the total rent arrears.

Furthermore, she advised that they are seeking compensation in the amount of **\$315.00** for the cost of repairing damage in the form of several gouges in the walls of the rental unit. She stated that Tenant P.W. could not help move as she was pregnant, so Tenant D.B. moved all of the sizeable furniture himself without any assistance. As a result, he caused fresh damage to the walls. She referenced a text message exchange where Tenant D.B. concurred about the price to fix the damage, she cited photos of the

damage, and she referred to the invoice of the repair job to support her claims for this damage.

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 23 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act* and *Residential Tenancy Regulations* (the "*Regulations*").

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed testimony, I am satisfied that the Landlords extinguished their right to claim against the deposit for damage as they failed to conduct a move-in inspection report with the Tenants. However, as the Landlords were also applying for

compensation for rental loss, I am satisfied that they were still entitled to apply to retain the deposit.

As the undisputed evidence is that the Tenants provided a forwarding address via text on September 29, 2019, the Landlords must have either returned the deposit in full or made an Application to keep the deposit within 15 days of this date. As October 14, 2019 was a holiday, the Landlords must have made this Application by October 15, 2019 at the latest, which they did. As the Landlords complied with the requirements of Section 38 of the *Act*, I am satisfied that the doubling provisions will not apply to the security deposit.

With respect to the Landlords' 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."

With respect to the Landlords' claim in the amount of \$1,900.00 for the rental arrears, I am satisfied of the undisputed evidence that the Tenants failed to pay the balance of August 2019 rent or any of September 2019 rent. Consequently, I am satisfied that the Landlords should be awarded a monetary award in the amount of **\$1,900.00** for this loss.

Regarding the Landlords' claim in the amount of \$315.00 for the cost of repairing the damaged drywall in the rental unit, despite the lack of a move-in inspection report, I am satisfied from the undisputed evidence that the rental unit was brand new at the start of the tenancy. Based on the pictures provided, I am doubtful that the rental unit would have been rented with this damage. Furthermore, Tenant D.B. acknowledged in his text that his quote to repair the damage was similar to the Landlords' quote. As a result, I am satisfied that there is a preponderance of evidence before me corroborating that the Tenants, more likely than not, caused this damage to the rental unit. As a result, I am satisfied that the Landlords have established this claim, and I find that the Landlords should be awarded a monetary award in the amount of **\$315.00** to satisfy this debt.

As the Landlords were successful in this Application, I find that they are 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 Landlords to keep the security deposit in partial satisfaction of the debts.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

August 2019 rent arrears	\$550.00
September 2019 rent arrears	\$1,350.00
Drywall damage repairs	\$315.00
Less the security deposit	-\$680.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,635.00

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,635.00** 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: March 6, 2020

Residential Tenancy Branch