



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

On June 5, 2020, 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 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*.

Landlord M.B. attended the hearing with K.N. attending as counsel for the Landlords. The Tenant did not attend the 37-minute hearing. All in attendance provided a solemn affirmation.

K.N. advised that the Notice of Hearing and evidence package was served to the Tenant by email on June 5, 2020. However, he stated that he did not check to see if the Tenant could view the digital evidence prior to sending it, pursuant to Rule 3.10.5 of the Rules of Procedure. The Landlord advised that he received an email from the Tenant on June 22, 2020 stating that she would not be attending this hearing, but this email was not submitted as documentary evidence. Based on the Landlord’s solemnly affirmed testimony, I am satisfied that the Tenant was served with the Notice of Hearing and evidence package in accordance with the *Act*. Furthermore, I have accepted the entirety of the Landlords’ evidence and will consider it 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

- 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 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 May 1, 2018 and it ended when the Tenant gave up vacant possession of the rental unit on May 31, 2020. Rent was established at an amount of \$1,172.00 per month and was due on the first day of each month. A security deposit of \$550.00 was also paid. A signed tenancy agreement between the parties was submitted as documentary evidence.

He advised that a move-in inspection report was never conducted as the rental unit was freshly renovated prior to the start of the tenancy. He stated that a move-out inspection report was never completed because the Tenant did not attend this inspection at the end of the tenancy; however, he confirmed that did not provide the Tenant with a Notice of Final Opportunity to attend a move-out inspection.

He advised that they were never provided with the Tenant's forwarding address in writing, and the address used on the Application was the Tenant's work address.

The Landlord advised that they are seeking compensation in the amount of **\$1,172.00** for April 2020 rent as the Tenant did not pay this. He stated that he emailed the Tenant on April 2 and April 14, 2020 requesting the rent for the month; however, they received no response, nor did they receive any payment. These emails were submitted as documentary evidence.

The Landlord advised that they are seeking compensation in the amount of **\$207.82** for the cost of changing the main lock to the rental unit as the Tenant did not return the keys. They paid to have the locks changed as they had sold the rental unit and wanted to ensure that the new owners had sole access. He referenced the receipt that was

submitted as documentary evidence to support the cost of materials and labour to have the lock changed.

The Landlord advised that they are seeking compensation in the amount of **\$175.35** for the cost of junk removal due to items that the Tenant left in the rental unit after giving up vacant possession. He stated that the Tenant left behind an old air conditioning unit, old furniture, an old barbecue, a table, a bookshelf, a printer, an empty suitcase, a vacuum, a TV stand, and garbage. As a result, he hired a junk removal company to dispose of this refuse. He referenced photos submitted as documentary evidence to demonstrate the items that were left behind, and he referenced the receipt that was submitted to support the cost of disposing of these items.

The Landlord advised that they are seeking compensation in the amount of **\$130.00** for the cost of cleaning the rental unit as the Tenant not leave the unit in a re-rentable state. He stated that the previous tenant was a “pig” and he had to renovate the rental unit prior to the Tenant moving in, so the condition was essentially brand new. He submitted that the rental unit was “pretty dirty” at move-out, that there was water left in the bathtub because the drain was plugged, that the toilet was not cleaned, that the kitchen was dirty and the drawers were not cleaned, and that the fridge was not cleaned either. He stated that the dishwasher was not cleaned and there was food left in it. As well, he stated that the floors were not washed, that the carpet was not cleaned, that the windows were not cleaned, and that there was dust everywhere. While the Landlord claimed that he submitted two videos of the condition of the rental unit at the end of the tenancy, K.N. confirmed that only one video of this move-out condition was submitted as evidence. He also submitted confirmation from the cleaner that it took two hours to return the unit to a re-rentable state.

The Landlord advised that they are seeking compensation in the amount of **\$135.45** for the cost of repairing the dishwasher. He stated that the dishwasher was purchased new on November 1, 2017 and a receipt was submitted as documentary evidence to prove this. He stated that he was advised by the Tenant on September 11, 2018 that the dishwasher was not working, which surprised him as the appliance was only one year old. He called a repair technician who had discovered that the problem originated with a utensil that was interfering with the proper functioning of the dishwasher. The Tenant apologized for this and a payment plan was arranged for the Tenant to pay off this repair bill. However, the Tenant only paid the Landlord \$56.00 towards this repair. As a result, the Landlord is only seeking compensation in the amount of **\$79.45** now. An invoice was submitted as documentary evidence to support this cost of repair. As well,

text messages from the Tenant acknowledging liability for this damage were submitted as documentary evidence.

Finally, the Landlord advised that they are seeking compensation in the amount of **\$21.23** for the cost of re-keying the mailbox as the Tenant did not return this key either. He stated that the new owner called a locksmith to have this re-keyed, and the Landlords reimbursed the new owners for this amount. An invoice for the cost of this re-keying was submitted as documentary evidence.

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.

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. However, these Sections pertain to a Landlords' right to claim for damage, and as the Landlords also applied for rent owing, which is not a damage claim, the Landlords still retain a right to claim against the security deposit.

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 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 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 Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that a forwarding address in writing was never provided to the Landlords. As such, the requirements of the *Act* do not apply until one is provided. Despite this, I am satisfied that the Landlords were entitled to claim against the deposit still and that the Tenant received the Landlords' Notice of Hearing package by email.

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.”

Regarding the Landlords’ claim for the rental loss for April 2020, I am satisfied from the Landlord’s solemnly affirmed and undisputed testimony that the Tenant did not pay rent for this month. As a result, I grant the Landlords a monetary award in the amount of **\$1,172.00** to satisfy this debt.

With respect to the Landlords’ claim of \$207.82 for the cost associated with rekeying the main lock to rental unit, I am satisfied from the Landlord’s solemnly affirmed and undisputed testimony that the Tenant did not return the keys. As a result, I grant the Landlords a monetary award in the amount of **\$207.82** to rectify this issue.

Regarding the Landlords’ claim for the cost associated with junk removal, while the Landlords did not complete a move-in or move-out inspection report, which are requirements of the *Act*, a preponderance of evidence supporting a certain position on a balance of probabilities, can also be considered when assessing the legitimacy of a claim.

When weighing the evidence before me, I have undisputed pictures and a video submitted by the Landlords of the items that were left behind by the Tenant. As I find it reasonable to conclude that these items were left by the Tenant at the end of tenancy, I am satisfied that the Landlords have established their claim. Consequently, I grant the Landlords a monetary award in the amount of **\$175.35** to satisfy this claim.

With respect to the Landlords’ claim for the cost associated with cleaning, again, I find it important to note that the Landlords did not complete a move-in or move-out inspection report, which are requirements of the *Act*. These reports would clearly document the condition of the rental at the start and end of tenancy. While a preponderance of evidence supporting a certain position on a balance of probabilities, can also be considered when assessing the legitimacy of a claim, I do not find that videos would be entirely accurate depictions of the condition of the rental unit, nor do I find that they are substitutes for the required reports.

When weighing the evidence before me, I have undisputed pictures and a video submitted by the Landlords of the condition of the rental unit at the end of the tenancy. However, when viewing the video, I find that there is little evidence to support the specific conditions of the rental unit that the Landlord testified to during the hearing.

Based on this, and as the Landlords did not complete the required reports, I am not satisfied that they have established their claim on this point. Although, given that the Tenant did leave unwanted items behind, I can reasonably infer that some cleaning would have been associated with this. As a result, I am satisfied that the Landlords have only partially satisfied this claim and I grant them a monetary award in the amount of **\$50.00**.

Regarding the Landlords' claim for the cost associated with the repair of the dishwasher, I am satisfied from the Landlord's solemnly affirmed testimony and undisputed evidence that the Tenant was negligent in causing the dishwasher damage and should be responsible for this repair cost. As a result, I grant the Landlords a monetary award in the amount of **\$79.45** to satisfy this debt.

Finally, with respect to the Landlords' claim of \$21.23 for the cost of re-keying the mailbox, based on the Landlord's solemnly affirmed testimony and undisputed evidence, I am satisfied that the Tenant did not return any keys at the end of the tenancy. As such, I grant the Landlords a monetary award in the amount of **\$21.23** to satisfy this claim.

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 retain the security deposit in partial satisfaction of the debts outstanding.

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 Tenant to the Landlords

April 2020 rent	\$1,172.00
Costs associated with changing the lock	\$207.82
Costs associated with junk removal	\$175.35
Costs associated with cleaning	\$50.00
Costs associated with dishwasher repair	\$79.45
Costs associated with mailbox re-keying	\$21.23
Filing fee	\$100.00
Security deposit	-\$550.00
TOTAL MONETARY AWARD	\$1,255.85

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,255.85** 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: June 30, 2020

Residential Tenancy Branch