



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

On April 30, 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 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*.

Both Landlords attended the hearing; however, the Tenant did not appear during the 24-minute teleconference hearing. All parties in attendance provided a solemn affirmation.

The Landlords advised that they served the Notice of Hearing and evidence package to the Tenant by Xpresspost on May 6, 2020 and by email on May 7, 2020. They provided proof of service that the Tenant received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, I have accepted this 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 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.

The Landlords advised that the tenancy started on December 1, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 4, 2020. Rent was established at \$1,700.00 per month and that it was due on the first day of each month. A security deposit of only \$375.00 was actually paid. A copy of the signed tenancy agreement was submitted into evidence.

They stated that a move-in inspection report was conducted with the Tenant on November 29, 2019; however, the copy of this report that was submitted as documentary evidence was not signed. They could not explain why it was not signed and speculated that they simply forgot to do so at the time of the inspection. As well, a move-out inspection report was not conducted as the Tenant was not in a condition to do so and had the assistance of the RCMP to help her move.

They advised that the Tenant provided her forwarding address in writing on May 5, 2020 via text message.

They advised that they were seeking compensation in the amount of **\$1,073.28** because the Tenant did not pay for the utilities that she owed during the tenancy. They submitted a copy of the municipal utility bill to support the cost of the utilities in arrears.

They also advised that they were seeking compensation in the amount of **\$850.00** for February 2020 rent as only half the month of rent was paid. They stated that rent was paid through the ministry; however, only half the rent for the month was received. They provided a copy of the rent receipt for February 2020 to support their position that half the month of rent was still in arrears.

Finally, they advised that they were seeking compensation in the amount of **\$1,483.43** because the Tenant left the rental unit in an unrentable condition at the end of the tenancy. They stated that the Tenant left a considerable amount of drug paraphernalia behind, and for their safety, they hired a restoration company to come in and sweep the

rental unit. This company removed needles, cleaned up rotten food, and conducted a deep clean of the rental unit to return it to a re-rentable state. They submitted an invoice from this company to support the cost to have this cleaning and remediation completed.

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 Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

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

Section 21 of the *Residential Tenancy Regulations* (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 Tenant have a preponderance of evidence to the contrary.

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. As these Sections pertain to the Landlords’ right to claim for damage, and as the Landlords did not complete a move-in inspection report with the Tenant, I find that the Landlords extinguished their 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 the forwarding address in writing was provided to the Landlords on May 5, 2020 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 4, 2020. While the Landlords made their Application within the 15-day time frame to claim against the deposit, they extinguished their right to claim against the security deposit by virtue of not completing a move-in inspection report. However, Section 38 of the *Act* only pertains to damage, and as the Landlords also applied for rent and utilities owing, I find that they were still permitted to make an Application to retain the security deposit for compensation. As such, I find that the doubling provisions do not apply in this instance.

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 compensation in the amount of \$1,073.28 to cover the cost of utilities owed, based on the undisputed evidence before me, I am satisfied that the Landlords should be granted a monetary award in the amount of **\$1,073.28**.

With respect to the Landlords' claim for compensation in the amount of \$850.00 for the remaining balance of February 2020 rent, based on the undisputed evidence before me, I am satisfied that only half the rent for this month was paid. As such, I grant the Landlords a monetary award in the amount of **\$850.00**.

Finally, regarding the Landlords' claim for compensation in the amount of \$1,483.43 for the cost to remediate and clean the rental unit, despite the absence of a move-in or a move-out inspection report, based on the undisputed evidence before me, I am satisfied that the Tenant did not leave the rental unit in a condition that was suitable for re-rental. Consequently, I grant the Landlords a monetary award in the amount of **\$1,483.43**.

As the Landlords were successful in their claims, I find that the Landlords 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 debt awarded.

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

Utilities	\$1,073.28
February 2020 rent arrears	\$850.00
Restoration and cleaning	\$1,483.43
Filing fee	\$100.00
Security deposit	-\$375.00
TOTAL MONETARY AWARD	\$3,131.71

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$3,131.71** 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: September 4, 2020

Residential Tenancy Branch