



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDP-DR, FFT, MNDL-S, MNDCL, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 11, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security and pet damage deposits pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the pet damage deposit towards this debt pursuant to Sections 38 and 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing as well. All parties in attendance provided a solemn affirmation.

Tenant J.O. advised that they served the Landlord with a Notice of Hearing and evidence package by registered mail and the Landlord confirmed that she received this package on or around mid-May 2020. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package. He advised that he submitted late evidence that was not served to the Landlord. As this evidence was not served to the Landlord, I have excluded this late evidence and will not consider it when rendering this Decision. However, I have accepted the rest of the Tenants’ evidence and will consider it when rendering this Decision.

The Landlord advised that she served each Tenant with the Notice of Hearing and evidence package by registered mail on June 1, 2020, and the Tenants confirmed that they received these packages. Based on the undisputed testimony, and in accordance

with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served these packages. As well, I have accepted the Landlords' evidence and will consider it when rendering this Decision.

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 Tenants entitled to a return of double the security and pet damage deposits?
- Are the Tenants entitled to recovery of the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the pet damage deposit towards this debt?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence and Procedural Matters

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 most current tenancy started on April 5, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 5, 2020. Rent was established in the amount of \$2,700.00 per month and was due on the first day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were also paid. A partial copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that neither a move-in inspection report, nor a move-out inspection report was conducted. They also agreed that the Tenants provided their forwarding address in writing by text message on April 9, 2020.

The Landlord advised that there were three co-tenants on the tenancy, so she provided Tenants J.O. and C.M. with a cheque in the amount of \$2,250.00 on April 5, 2020. This

cheque amounted to \$900.00 of their security deposit and the \$1,350.00 that they paid for a pet damage deposit. She stated that she cancelled that cheque on April 6, 2020. She also returned \$450.00 to the third co-tenant, on April 5, 2020, as his share of the security deposit. On April 10, 2020, she electronically transferred \$900.00 to J.O. and C.M. as their portion of the security deposit; however, she retained their pet damage deposit without their written consent.

J.O. confirmed that the third tenant received \$450.00 from the Landlord, that him and C.M. received \$900.00 from the Landlord on April 10, 2020 as the remaining balance of their security deposit, and that the Landlord withheld their pet damage deposit without their written consent.

With respect to the Landlord's Application, under the Dispute Information, she indicated that the amounts she was seeking compensation for was **\$3,266.00** and **\$2,700.00**. During the hearing, the Landlord indicated that she did not complete a monetary order worksheet, nor did she itemize or detail the different heads of claim that she was seeking compensation for. While it was clear that the \$2,700.00 amount was for lost rent, apart from invoices and receipts for some materials and work completed, she submitted no indication as to how she arrived at the specific amount of \$3,266.00 that she was claiming. The receipts and invoices submitted totalled more than this amount. I find it important to note that Rule 2.5 of the Rules of Procedure states that:

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- ***a detailed calculation of any monetary claim being made;***
- ***a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and***
- ***copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].***

Furthermore, Section 59(2) of the Act requires the party making the Application to detail the full particulars of the dispute. When the Tenants were asked if they understood the nature of the Landlord's claims, J.O. advised that it was not clear to them what issues the Landlord was seeking compensation for, nor was it clear the amounts of compensation that the Landlord was requesting. Therefore, the Tenants did not sufficiently know the case against them.

I note that the Landlord's claim is for a substantial amount of money, for seemingly many different issues. As the Landlord had not made it abundantly clear to any party of her claims, or how she arrived at the exact amounts she believes is owed by the Tenants, I find that it is prejudicial to the Tenants not to have a monetary order worksheet, or any breakdown of how the amount of \$3,266.00 was arrived at. The Landlord had ample opportunity to upload a written breakdown, but she failed to do so. This makes it difficult for me to understand the nature and basis of the Application. Since the Landlord did not submit the necessary documents and failed to explain how she arrived at the amount of compensation she is seeking, I dismiss her Application with leave to reapply.

Analysis

As the Landlord's Application is dismissed with leave to reapply, this section of the Decision will solely pertain to the Tenants' Application.

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 Landlord 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 Landlord 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 Landlord must offer at least two opportunities for the Tenants 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 Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As these Sections pertain to a Landlord's

right to claim for damage, and as the Landlord did not conduct a move-in or move-out inspection report with the Tenants, I find that the Landlord extinguished her right to claim against the security deposit and pet damage deposit.

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 Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the Tenants' forwarding address in writing was provided to the Landlord on April 9, 2020 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 5, 2020. As the Landlord returned the entirety of the security deposit to all three tenants by April 10, 2020, I find that the Landlord complied with Section 38 of the *Act* and the doubling provisions do not apply in this instance.

However, as she extinguished her right to claim against the pet damage deposit, I find that she has not complied with the requirements of the *Act*. While she still was permitted to make an Application for compensation for damages, as she did not return the pet damage deposit in full within the 15 days of April 9, 2020 due to her extinguishing her right to claim against the pet damage deposit, I find that the doubling provisions do apply in this instance. As a result, I grant the Tenants a monetary award in the amount of **\$2,700.00**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was not successful in her claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

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

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of security deposit	\$2,700.00
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Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,800.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,800.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

The Landlord's Application is dismissed with leave to re-apply.

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 10, 2020

Residential Tenancy Branch