



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On July 29, 2020, 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 security deposit and 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 the Landlord and the Tenant attended the hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing package by registered mail on July 30, 2020 and the Tenant confirmed that he received this package. 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 package.

The Landlord also advised that his father served the Tenant with his evidence by registered mail; however, he was not sure when this was served, and he did not have any proof of service. The Tenant advised that he did not receive any evidence from the Landlord. As the Landlord has not provided any evidence to support that his evidence was served in accordance with the *Act*, this evidence will be excluded and will not be considered when rendering this Decision.

The Tenant advised that he did not submit any evidence for consideration on this file.

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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord 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.

All parties agreed that the tenancy started on July 11, 2019 and ended when the Tenant gave up vacant possession of the rental unit on July 11, 2020. Rent was established at \$1,900.00 per month and was due on the first day of each month. A security deposit of \$950.00 and a pet damage deposit of \$950.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on July 11, 2019 and a move-out inspection report was conducted on July 11, 2020.

As well, all parties agreed that the Tenant provided his forwarding address in writing on the move-out condition inspection report on July 11, 2020.

The Landlord advised that he is seeking compensation in the amount of **\$500.00** for the cost of replacing a used, antique, designer sofa that he purchased for \$700.00 one year prior to the tenancy commencing. He stated that the rental unit was furnished, and this was included as part of the tenancy, as per the tenancy agreement. He stated that there was a large stain on the sofa at the end of the tenancy that was caused by the Tenant's pet. He submitted that the Tenant agreed to this damage verbally at the end of the tenancy, that the Tenant agreed that the cost of the sofa was \$500.00, and that the Tenant signed the move-out inspection report agreeing to this.

The Tenant made multiple submissions that the sofa already had stains on it, that he did not know about this stain that the Landlord was referring to, that any damage on the sofa was reasonable wear and tear, and that he never had a conversation about the sofa being valued at \$500.00. However, when it was brought up that the Tenant signed

the move-out inspection report regarding this sofa, he acknowledged that he initialed the move-out inspection report agreeing to the damage to the sofa, but only to this damage.

The Landlord advised that he is seeking compensation in the amount of **\$250.00** for the cost of replacing a new, small sofa that he purchased one and a half to two years prior to the tenancy commencing. He was unsure how much it cost him but was “maybe \$200.00 or \$300.00”. He stated that the rental unit was furnished, and this small sofa was included as part of the tenancy, as per the tenancy agreement. He stated that there were dog scratches on this sofa at the end of the tenancy. He submitted that the Tenant signed the move-out inspection report agreeing to this damage.

The Tenant seemed to refute that this was a small sofa, but claimed it was a hutch instead. He acknowledged that it was lightly scratched; however, he did not sign the move-out inspection report regarding the mini-sofa as the Landlord added this on the report later.

The Landlord advised that he is seeking compensation in the amount of **\$900.00** for the cost of June 2020 rent. He stated that the Tenant only paid \$1,000.00 of June 2020 rent and is still in arrears for the balance.

The Tenant confirmed that he only paid \$1,000.00 for June 2020 rent, but the Landlord received \$300.00 from the government to put towards this month’s rent. As such, he is only in arrears \$600.00.

The Landlord stated that he did not get this \$300.00 supplement from the government as this rebate ran out prior to June 2020. He read from a message that he received from the government confirming that he received three installments of \$300.00, but these were for the months prior to June 2020.

The Landlord advised that he is seeking compensation in the amount of **\$150.00** for the cost to clean the rental unit as the Tenant did not leave the rental unit in a re-rentable state. He stated that after the box spring and sofas were removed, he noticed that there was dust, dirt, and hair everywhere, and this triggered his asthma. As well, the Tenant left many items behind, including clothes hangers, and food in the fridge. He estimated that it would take “under one hour to clean” and he paid a cleaner “about \$100.00” to do this. However, he spent additional time cleaning as well.

The Tenant advised that he had the rental unit professionally cleaned three days before the end of the tenancy, that he had a receipt for this, and that it cost him \$300.00. He stated that the hangers that were left behind were included at the start of the tenancy.

The Landlord advised that he is seeking compensation in the amount of **\$250.00** for the cost of disposing of the sofas and a box spring that the Tenant left behind. He submitted that he provided a bed at the beginning of the tenancy, but the Tenant asked him to remove it, so he did. The Tenant then brought in his own bed and left the box spring behind. He stated that the Tenant agreed to pay for the cost for having the box spring and sofas removed. He advised that it cost him \$250.00 to have these items removed and disposed of.

The Tenant submitted that he advised the Landlord that he could dispose of these items himself; however, the Landlord took the keys back, so he was unable to do so. He stated that the Landlord wanted him to go back later with the disposal person to remove these items, but he could not get the key from the Landlord. He confirmed that he agreed to pay for the removal, but he was never given a price for this from the Landlord.

Finally, the Landlord advised that he is seeking compensation in the amount of **\$800.00** for the cost to repaint the ceiling of the rental unit. He stated that he noticed what looked to be black mould or dust on the ceiling. As the ceiling was textured, it could not be cleaned, so it had to be painted. He testified that he phoned companies for quotes and he received one quote of "around \$1,000.00" to clean the ceiling and "about \$1,500.00" to re-paint it. Instead of having a company complete this work, he elected to paint it himself. He stated that the paint cost "around \$300.00" for materials and that it took him at least 10 hours over the course of a week to complete the painting.

The Tenant advised that he did not smoke in the rental unit and he suffers from asthma as well. He stated that the rental unit was across from a building that was under construction, and the dust and dirt from this project likely came in through the windows. He submitted that there was no mould on the ceiling, and it would not make sense to simply paint over this if it were mould.

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

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on July 11, 2020. As the tenancy ended on this date as well, I find that July 11, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on July 29, 2020. As the fifteen day fell on Sunday July 26, 2020, the Landlord had until Monday July 27, 2020 to make this Application. However, the Landlord failed to comply with the requirements of the *Act* as he did not return the deposits by July 26, 2020 and he failed to file this Application within the legislated timeframe. Consequently, I am satisfied that the doubling provisions apply to the deposits. As such, I grant the Tenant a monetary award in the amount of **\$3,800.00**.

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 of compensation in the amount of \$500.00 for the cost of replacement of the big sofa, as the Tenant acknowledged that he initialed the move-out inspection report agreeing to this amount for the sofa, I grant the Landlord a monetary award in the amount of **\$500.00** satisfy this claim.

With respect to the Landlord's claim of compensation in the amount of \$250.00 for the cost of replacement of the small sofa, regardless of if it was a sofa or a hutch, the consistent evidence is that it was scratched at the end of the tenancy and needed to be disposed of. As such, I am satisfied that the Tenant is responsible for this damage. However, the Landlord provided insufficient evidence to support the cost of this piece of furniture. Furthermore, as his varying, uncertain recollection of how much this piece of

furniture cost originally, I grant the Landlord a monetary award of **\$150.00**, or the amount I find would be equivalent to the value of this approximately three-year-old piece of furniture.

Regarding the Landlord's claim for compensation in the amount of \$900.00 for the remaining balance of June 2020 rent arrears, based on the evidence presented before me, I am satisfied from the messages that the Landlord read from that the Tenant's rent supplement from the government did not reimburse the Landlord for June 2020 rent. As such, I grant the Landlord a monetary award in the amount of **\$900.00** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$150.00 for the cost to clean the rental unit, I do not find it reasonable that if there were a significant amount of dust, dirt, and hair everywhere, that he would not have noticed this during the move-out inspection and that he only discovered this once the sofas and box spring were removed. However, while the Tenant advised that he hired a cleaner, he also acknowledged that any dust left behind would have been as a result of a construction project next to the rental unit. While I do not find that the Landlord has provided compelling evidence to support the condition he alleges the rental unit was left in, I do find that the Tenant has acknowledged that there was, more likely than not, at least some dust left behind. As a result, I grant the Landlord a nominal monetary award in the amount of **\$50.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$250.00 for the disposal costs, as the Tenant acknowledged that he would pay for the removal of these pieces of furniture, I grant the Landlord a monetary award in the amount of **\$250.00** to rectify this issue.

Finally, with respect to the Landlord's claim for compensation in the amount of \$800.00 for the cost of repainting the ceiling, I do not find it reasonable that the Landlord would not have noticed this during the move-out inspection. Furthermore, the onus is on the Landlord to provide evidence to support this claim. However, I do not find that he has submitted sufficient or compelling evidence to demonstrate what he considered to be this damage, nor did he provide sufficient evidence to corroborate his costs to repaint the ceiling. As such, I am not satisfied that the Landlord has established any basis for this claim, and I dismiss it in its entirety.

As the Landlord was partially successful in his Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a monetary award as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of security deposit	-\$1,900.00
Doubling of pet damage deposit	-\$1,900.00
TOTAL MONETARY AWARD	-\$3,800.00

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a monetary award as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Replacement cost of big sofa	\$500.00
Replacement cost of small sofa	\$150.00
Rental arrears for June 2020	\$900.00
Cost of cleaning	\$50.00
Disposal of refuse	\$250.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,950.00

Therefore, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Order Payable by the Landlord to the Tenant

Monetary award payable to the Tenant	\$3,800.00
Monetary award payable by the Landlord	-\$1,950.00
TOTAL MONETARY ORDER	\$1,850.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$1,850.00** 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.

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: November 19, 2020

Residential Tenancy Branch