



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

On September 16, 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 this debt 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, neither Tenant attended at any point during the 40-minute hearing. All in attendance provided a solemn affirmation.

The Landlords advised that Tenant M.S. called them requesting a return of her property, so she provided them with her address. They stated that they drove to her house and served her the Notice of Hearing and evidence package by hand on September 25, 2020. They submitted a picture as proof of this service.

They stated that M.S. told them where Tenant M.M. lived and all three of them then drove to that address. The Landlords knocked on the door and M.M.’s father answered. He confirmed that M.M. lived there, and he accepted the Notice of Hearing and evidence package for M.M. because M.M. was at work. The Landlords submitted a picture as proof of this service. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that each Tenant has been sufficiently served the Notice of Hearing and evidence packages. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision. However, as the Landlords did not serve their video evidence, this evidence will be excluded and not considered 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 Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- 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 April 3, 2020 and ended when the Tenants gave up vacant possession of the rental unit on or around September 4, 2020. Rent was established at \$1,320.00 per month and was due on the third day of each month. A security deposit of \$660.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also stated that a move-in inspection report was conducted on April 3, 2020, but a move-out inspection report was not conducted as the Tenants abandoned the rental unit. They submitted a copy of a document entitled "Walk Through Record" to support their position that they conducted a move-in inspection report.

They stated that the Tenants never provided a forwarding address in writing.

They advised that they are seeking compensation in the amount of **\$1,320.00** for September 2020 rent because the Tenants did not pay this.

In addition, the Landlords advised that they are seeking compensation in the amounts of **\$793.60** for the cost to replace the damaged carpet, and **\$1,890.00** to repair and repaint the walls. They submitted that the carpets were approximately three years old prior to the tenancy starting and that they were clean. At the end of the tenancy, the carpets

were heavily stained a black colour and smelled very badly. They submitted pictures to support the condition of the carpet and they stated that the carpets were not salvageable, so they replaced the carpet with vinyl. They also submitted a copy of the invoice to support the cost to replace the carpet.

Regarding the repair and repainting of the walls, they stated that the walls were painted just before the Tenants moved into the rental unit. At the end of the tenancy, every wall and the doors were damaged and dirty, and cigarettes appeared to have been put out on the walls and carpet. All of this damage needed to be cleaned, filled, repaired, and repainted. They submitted pictures to support the condition of the walls and a copy of the invoice to support the cost to repair them.

Analysis

Upon consideration of the testimony 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 report.

Section 20 of the *Residential Tenancy Regulations* (the "*Regulations*") describes the standard information required on a condition inspection report. Section 21 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.

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*.

When reviewing the Landlords' "Walk Through Record", it is evident that this does not comply with Section 20 of the *Regulations*. As such, the Landlords have extinguished their right to claim against the deposit for damage.

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 evidence before me, I am satisfied that the Landlords were never provided with the Tenants' forwarding address in writing. Furthermore, while the Landlords did extinguish their right to claim against the deposit, I note that this applies to damage claims. As the Landlords also sought compensation for rental arrears, which I do not consider to be damage, I am satisfied that the doubling provisions do 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."

Regarding the Landlords' claim for compensation in the amount of \$1,320.00 for the rental arrears, based on the undisputed evidence before me, I am satisfied that the Tenants did not pay September 2020 rent. As such, I grant the Landlords a monetary award in the amount of **\$1,320.00** to satisfy this debt.

With respect to the Landlords' claim for compensation in the amount of \$793.60 for the cost of replacing the carpet, despite there not being a move-in inspection report or any evidence to document the condition of the carpet at the start of the tenancy, based on the pictures provided, I do not find it reasonable that the rental unit was provided to the Tenants in that condition. As such, I accept from the pictures submitted that the heavy damage to the carpet was more likely than not caused by the Tenants, that these stains could not be removed, and that the carpet required replacement. I also accept from the

Landlords' solemnly affirmed testimony that the carpet was approximately three years old at the start of the tenancy.

Policy Guideline # 40 sets out the approximate useful life of carpet at 10 years. As the Landlords had already benefitted from three years of use of the carpet, I grant the Landlords a monetary award in the amount of **\$529.07** to satisfy this claim.

Regarding the Landlords' claim for compensation in the amount of \$1,890.00 for the cost of repairing and repainting the walls, despite there not being a move-in inspection report or any evidence to document the condition of the walls at the start of the tenancy, given the extensive stains and damage in the pictures provided, I do not find it reasonable that the rental unit was provided to the Tenants in that condition. As such, I accept from the pictures submitted that the damage and stains on the walls were more likely than not caused by the Tenants. I also accept from the Landlords' solemnly affirmed testimony that the walls were freshly painted at the start of the tenancy. Based on the undisputed evidence before me, I grant the Landlords a monetary award in the amount of **\$1,890.00** to rectify this claim.

As the Landlords were partially successful in these 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 retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 38, 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

September 2020 rent	\$1,320.00
Cost to replace floor	\$529.07
Cost to replace wall damage	\$1,890.00
Recovery of filing fee	\$100.00
Security deposit	-\$660.00
TOTAL MONETARY AWARD	\$3,179.07

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$3,179.07** 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: January 8, 2021

Residential Tenancy Branch