



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD. & LANGARA
GARDENS (CONCERT NOMINEE) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On October 30, 2020, the Landlord applied for a Dispute Resolution proceeding 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 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.K. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well. All parties in attendance provided a solemn affirmation.

J.K. advised that the Landlord served the Notice of Hearing and evidence package to the Tenant on November 6, 2020 by registered mail. The Tenant confirmed that she received this package. Based on this undisputed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that she submitted her evidence to the Residential Tenancy Branch on February 11, 2021. J.K. stated that she had received this evidence and she had no opposition to it being considered. As such, the Tenant’s evidence has been accepted and will be 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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- 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 August 1, 2020 as a fixed term tenancy ending on July 31, 2021. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 17, 2020. Rent was established at \$1,600.00 per month and was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Tenant provided a forwarding address in writing on the move-out inspection report on October 17, 2020.

J.K. advised that the Landlord is seeking compensation in the amount of **\$800.00** for liquidated damages because the Tenant signed a fixed term tenancy starting on August 1, 2020 that was to end on July 31, 2021. However, the Tenant gave up vacant possession of the rental unit on October 17, 2020. She stated that the Tenant signed an agreement permitting the Landlord to keep the security deposit to apply to this debt.

She also advised that the Landlord was originally seeking compensation in the amount of **\$150.00** for the cost of carpet cleaning; however, the Landlord is no longer claiming for this. In fact, the Tenant paid the Landlord this amount for carpet cleaning, but the actual cost of the carpet cleaning was \$126.00. As such, the Landlord is seeking to compensate the Tenant \$24.00, which is the amount of the overpayment.

The Tenant acknowledged that she consented in writing to allow the Landlord to keep the security deposit to apply to the liquidated damages cost. She also advised that she did not get the \$100.00 key deposit back from the Landlord.

J.K. confirmed that she received the key fob back from the Tenant, but the Landlord has yet to return the \$100.00 key deposit.

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 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security 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 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 Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

However, given that the Tenant permitted the Landlord to keep the security deposit by signing a form on September 15, 2020 authorizing the Landlord to do so, I am satisfied that there is no security deposit left to claim against. Furthermore, as this agreement was for the security deposit to be applied to the liquidated damages, I find that this debt has been satisfied in its entirety. As a result, I dismiss the Landlord's claim for liquidated damages without leave to reapply.

With respect to the carpet cleaning, as the Landlord is no longer seeking to claim for this issue, and as the Landlord is seeking to reimburse the Tenant for the overpayment of the carpet cleaning, I grant the Tenant a monetary award in the amount of \$24.00.

Regarding the key fob deposit, as the Tenant has returned the key fob and as the Landlord has not returned the key deposit, I Order the Landlord to return this deposit.

As the Landlord already had written authorization from the Tenant to apply the security deposit towards the liquidated damages charge, as the Tenant paid the Landlord \$150.00 for carpet cleaning on October 17, 2020, and as J.K. advised that the Landlord is not claiming for the carpet cleaning but rather, wishing to reimburse the Tenant for an overpayment, it is not clear to me why it was necessary for the Landlord to make this Application in the first place. As such, I do not find that the Landlord was successful in

this Application. Therefore, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

While this was not the Tenant's Application, pursuant to Sections 62 and 67 of the Act, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Carpet cleaning reimbursement	\$24.00
Key deposit	\$100.00
TOTAL MONETARY AWARD	\$124.00

Conclusion

The Landlord's Application is dismissed without leave to reapply. Based on the above, the Tenant is provided with a Monetary Order in the amount of **\$124.00** 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: February 11, 2021

Residential Tenancy Branch