



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

On November 4, 2020, the Landlord 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*.

C.L. attended the hearing as an agent for the Landlord; however, neither Tenant attended at any point during the 21-minute teleconference. All in attendance provided a solemn affirmation.

She advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on November 6, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that one package was delivered, and one package was returned to sender. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served and/ or deemed to have received the Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenants 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 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.

C.L. advised that the most current tenancy started on August 1, 2020 and ended when the Tenants gave up vacant possession of the rental unit on October 16, 2020. Rent was established at \$2,700.00 per month and was due on the first day of each month. A security deposit of \$1,350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that a move-in inspection report was conducted on August 1, 2019 and a move-out inspection report was conducted on October 16, 2020. However, the Tenants did not sign the move-out inspection report and simply left after the inspection. A copy of these reports was submitted as documentary evidence. She also advised that the Tenants provided their forwarding address by email on October 20, 2020, and this email was submitted for consideration.

C.L. advised that the Landlord is seeking compensation in the amount of **\$4,800.00** for unpaid rent in the amount as follows:

- | | |
|------------------|-------------------|
| • August 2020 | \$1,400.00 |
| • September 2020 | \$700.00 |
| • October 2020 | \$2,700.00 |
| Total | \$4,800.00 |

She stated that the Tenants only made these partial payments, and she referenced a rent ledger that was submitted as documentary evidence to support this position.

C.L. advised that the Landlord is seeking compensation in the amount of **\$25.00** for an NSF/Late fee for September 2020 rent. She cited Section 4.1 of the tenancy agreement

which indicated that this amount could be charged if rent was paid late or if there was an NSF fee charged.

C.L. advised that the Landlord is seeking compensation in the amount of **\$480.00** for the cost of cleaning because the Tenants did not return the rental unit in a re-rentable state at the end of the tenancy. She referenced the move-out inspection report and photos submitted to corroborate the condition that the rental unit was left in, and she referenced the invoice to support the cost of the cleaning.

Finally, C.L. advised that the Landlord is seeking compensation in the amount of **\$430.00** for the cost of disposing of refuse that was left behind by the Tenants. She referenced the move-out inspection report and photos submitted to corroborate the items left inside and outside the rental unit, and she referenced the invoice to support the cost of the refuse removal and disposal.

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 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 upon 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 upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

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.

The undisputed evidence before me is that a move-in inspection report and a move-out

inspection report were completed with the Tenants present. As such, I find that the Landlord did not extinguish the right to claim against the 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 Tenants' 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord received the Tenants' forwarding address on October 20, 2020. As the tenancy ended on October 16, 2020, I find that October 20, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The consistent evidence before me is that the Landlord made this Application to claim against the deposit on November 4, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframe, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the doubling provisions do not apply in this instance.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to 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."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?

- Did the Landlord act reasonably to minimize that damage or loss?

Regarding the Landlord's request for compensation for rental arrears, based on the undisputed evidence before me, I am satisfied that the Tenants did not pay the amounts of rent claimed for by the Landlord. As such, I grant the Landlord a monetary award in the amount of **\$4,800.00** to satisfy this debt.

With respect to the Landlord's claims for the NSF/late fee, I find it important to note that there is a term in the tenancy agreement which permits for this to be charged if there is an NSF/late fee. In addition, Section 7 of the *Residential Tenancy Regulations* permits this amount to be charged in such an instance. As the undisputed evidence is that September 2020 rent was not paid in full, I grant the Landlord a monetary award in the amount of **\$25.00** to satisfy this claim.

Regarding the Landlord's request for compensation for cleaning, based on the undisputed evidence before me, I am satisfied that the Tenants did not leave the rental unit in a satisfactory condition at the end of the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$480.00** to satisfy this debt.

Finally, with respect to the Landlord's claims for the cost of refuse removal and disposal, based on the undisputed evidence before me, I am satisfied that the Tenants left items behind, inside and outside the rental unit, that the Landlord was then forced to dispose of. As such, I grant the Landlord a monetary award in the amount of **\$430.00** to satisfy this debt.

As the Landlord was successful in these claims, I find that the Landlord is 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 Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

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

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
August 2020 rental arrears	\$1,400.00
September 2020 rental arrears	\$700.00
September 2020 rental arrears	\$2,700.00

NSF/Late fee	\$25.00
Cleaning fee	\$480.00
Refuse removal and disposal	\$430.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$1,350.00
Total Monetary Award	\$4,485.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$4,485.00** 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: February 17, 2021

Residential Tenancy Branch