



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, FFL

Introduction

On October 31, 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 these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord L.C. attended the hearing; however, the Tenant did not attend at any point during the 56-minute teleconference. All in attendance provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on November 7, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was accepted and signed for by the Tenant on December 14, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been sufficiently served the Notice of Hearing and evidence package.

However, he advised that he did not check with the Tenant to see if she was able to view the included digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. As such, I have accepted only the Landlords’ documentary evidence and will consider it when rendering this Decision. The Landlords’ digital evidence will be excluded and not considered when rendering this Decision.

The Tenant 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

- 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 Landlord advised that the tenancy started on June 1, 2018 and ended when the Tenant left the keys in the mailbox and gave up vacant possession of the rental unit in early October 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 agreements was submitted as documentary evidence.

He stated that a move-in inspection report was conducted with the Tenant on May 30, 2018, but a move-out inspection report was not completed as the Tenant vacated the rental unit without notice. A copy of the move-in and move-out inspection report was submitted as documentary evidence. He also stated that the Tenant provided her forwarding address by text message on October 3, 2020.

The Landlord advised that they are seeking compensation in the amount of **\$800.00** for the balance of October 2020 rent. He stated that the Tenant texted them in late September 2020 advising that she would be ending the tenancy for October 1, 2020. However, she then gave up vacant possession of the rental unit by early October 2020. She did not give written notice to end the tenancy, and she paid only \$800.00 for October 2020 rent.

He advised that they are seeking compensation in the amounts of **\$173.74** and **\$13.09** for the cost of materials to repair, sand, and paint holes in the walls, and **\$300.00** for the cost of his labour to complete this repair. He stated that the walls were left dirty, that

there were many pin holes and screws left on the walls, and that the Tenant's children drew on the walls with ink. He referenced the invoices submitted as documentary evidence to support these costs and he cited the pictures submitted which documented the damage. He stated that the walls were freshly painted when he purchased the rental unit in 2017 and he advised that it took him six hours to repair and repaint the walls.

He advised that they are seeking compensation in the amount of **\$824.14** for the cost of replacing the carpet in the main and second bedrooms, and **\$600.00** for the cost of his labour to install the carpet. He stated that the carpets were stained by the Tenant and both him and the Tenant attempted to clean this, unsuccessfully. He referenced pictures submitted as documentary evidence to support the condition of the carpet at the end of the tenancy. He submitted that the carpet was approximately 8 years old and was still in decent condition. He testified that the amounts they are seeking are estimates only as he did not install any new carpet yet. As well, he stated that he has never installed carpet before and estimated that it would take him 12 or more hours to complete this work.

He advised that they are seeking compensation in the amount of **\$220.50** for the cost of repairing a broken door frame, and **\$600.00** for the cost of his labour to do this repair. He cited pictures submitted demonstrating that the door frame was cracked vertically and destroyed, and that two doors required repainting because of children's handwriting and stains on the doors. He submitted an invoice to substantiate the cost of materials. As well, he stated that the number of hours that he estimated for this repair were "probably correct" as he spent approximately 100 hours fixing all the deficiencies in the rental unit caused by the Tenant.

He advised that they are seeking compensation in the amount of **\$1,463.97** for the cost of replacement blinds that were broken or removed by the Tenant, and **\$100.00** for the cost of his labour to install them. He referenced pictures of these missing or broken blinds and he stated that they were at least five years old. He submitted an estimate for the replacement blinds, and these were not purchased yet as the new tenant put up curtains. However, when this tenant leaves, they will take the curtains so he will have to purchase blinds again.

He advised that they are seeking compensation in the amount of **\$450.00** for the cost of cleaning as the Tenant did not leave the rental unit in a re-rentable state at the end of the tenancy. He stated that it took six hours to clean the interior of the rental unit and an additional three hours to clean the exterior. He referenced pictures submitted as

documentary evidence to demonstrate the extent of the cleaning that was required. They completed this work themselves.

He advised that they are seeking compensation in the amount of **\$42.00** for the cost of disposing of a mattress and box spring that the Tenant left behind at the end of the tenancy. He cited the invoice submitted to support this cost.

He advised that they are seeking compensation in the amount of **\$35.76** for the cost of renting a truck and **\$200.00** for four hours of the Landlords' time to collect and dispose of refuse. In actuality, he borrowed a friend's truck and paid that person in the form of a case of beer.

Finally, he advised that they are seeking compensation in the amount of **\$400.00** for "general expenses" such as: administration fees, gasoline, general consumable items, and tools. He acknowledged that these costs were not likely recoverable.

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 Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant 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 Landlords or the Tenant have a preponderance of evidence to the contrary.

The undisputed evidence before me is that a move-in inspection report was completed

with the Tenant; however, a move-out inspection report was not completed as the Tenant gave up vacant possession of the rental unit at some point without advising the Landlords. As such, I find that the Landlords were not able to schedule a move-out inspection report. Therefore, they did not extinguish their right to claim against the security deposit.

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

Based on the undisputed evidence before me, I am satisfied that the Landlords received the Tenant's forwarding address by text message on October 3, 2020. While the Tenant gave up vacant possession of the rental unit in early October 2020, the Landlord believed that the tenancy ended on October 15, 2020 and that he had 15 days from this point to either return the deposit in full or file an Application to claim against the deposit. However, as the Landlords did not return the deposit in full and made this Application on October 31, 2020, I find that they did not comply with the *Act* as this Application was filed a day late. As such, I am satisfied that the doubling provisions do apply in this instance, and I grant the Tenant a monetary award in the amount of **\$1,600.00**.

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 Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

Regarding the Landlords' claim for compensation for rental loss, when reviewing the totality of the evidence before me, there is no dispute that the tenancy was a month-to-month tenancy at that point, and the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlords receive the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. Section 52 of the *Act* outlines what is required regarding the form and content of a written notice to end tenancy.

What this means is that if the Tenant wanted to end the tenancy on September 30, 2020, written notice must have been served to the Landlord on or before August 31, 2020. If she wanted to end the tenancy on October 31, 2020, written notice must have been served to the Landlord on or before September 30, 2020. As rent is due on the first day of each month, the Tenant is not permitted to end the tenancy mid-month and only pay half the rent.

Based on the undisputed evidence before me, the Tenant did not provide the Landlords with a notice in writing to end her tenancy, and she simply gave up vacant possession of the rental unit at some point in October 2020. I do not find that the Tenant's form of ending the tenancy or the date with which she ended it was done in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Given that the Tenant was in a month-to-month tenancy and that she occupied the rental unit in October 2020, I am satisfied that she is responsible for the entirety of October 2020 rent. Consequently, I grant the Landlords a monetary award in the amount of **\$800.00**.

With respect to the Landlords' claim for compensation in the amount of \$173.74 and \$13.09 for the cost of materials to repair, sand, and paint holes in the walls, and \$300.00 for the cost of his labour to complete this repair, I accept the undisputed evidence that the Tenant damaged the walls, which required repairing. I find it important

to note that Policy Guideline # 40 sets out the approximate useful life of interior paint at 4 years. As the Landlord has already benefitted from three years of the paint, I find that the Landlords are entitled to a reduced monetary award in the amount of **\$300.00** to satisfy this claim.

Regarding the Landlords' claim for compensation in the amount of \$824.14 for the cost of replacing the carpet in the main and second bedrooms, and \$600.00 for the cost of his labour to install the carpet, I accept the undisputed evidence that the Tenant damaged the carpet. Again, Policy Guideline # 40 sets out the approximate useful life of carpet at 10 years and the Landlords have already benefitted from approximately eight years of the carpet. As such, I am satisfied that the Landlords should be granted a portion of this amount that they are seeking. With respect to the Landlord's claim that he will install the carpet himself and that it will take him approximately 12 hours, as the Landlord is inexperienced with carpet installation, I do not find it appropriate to award compensation for what would be his best estimate in practicing how to install this carpet. Consequently, I grant the Landlords a monetary award in the amount of **\$575.00**, which I find to be commensurate with the value of the carpet that the Landlord lost, as well as a reasonable price for a qualified person to complete the repair.

With respect to the Landlords' claim for compensation in the amount of \$220.50 for the cost of repairing a broken door frame and \$600.00 for the cost of his labour to do this repair, I accept the undisputed evidence that the Tenant damaged the door frame and that it required repairs. However, the Landlord has provided little evidence that it took him 12 hours to complete this repair and I find it more likely than not that the Landlords could have hired a qualified professional to complete this repair in a timelier and more cost-efficient manner. As such, I grant the Landlords a monetary award in the amount of **\$550.00** to satisfy the cost of the materials and the amount of labour required to rectify this issue.

Regarding the Landlords' claim for compensation in the amount of \$1,463.97 for the cost of replacement blinds that were broken or removed by the Tenant and \$100.00 for the cost of his labour to install them, I am satisfied from the undisputed evidence that the Tenant broke a set of blinds and that the other blinds were completely missing. However, these blinds were approximately five years old and Policy Guideline # 40 sets out the approximate useful life of blinds at 10 years. As a result, I grant the Landlords a monetary award in the amount of **\$800.00** to satisfy this debt.

With respect to the Landlords' claim for compensation in the amount of \$450.00 for the cost of cleaning inside and outside the rental unit, I am satisfied from the undisputed

evidence that the Tenant did not leave the rental unit in a re-rentable state at the end of the tenancy. While I do not doubt that it took nine hours to clean the rental unit, I find that the Landlords could have hired a company to complete this work at a more reasonable rate. As such, I grant the Landlords a monetary award in the amount of **\$360.00**.

Regarding the Landlords' claims for compensation in the amounts of \$42.00 for the cost of disposing of a mattress and box spring that the Tenant left behind, \$35.76 for the equivalent cost of renting a truck, and \$200.00 for four hours of the Landlords' time, I accept that the Tenant left refuse behind and that the Landlord was forced to remove and dispose of these items. However, I do not accept that \$50.00 per hour is an acceptable rate to charge for these services. As such, I grant the Landlords a monetary award in the amount of **\$240.00** to satisfy these claims.

Finally, with respect to the Landlords' claim for compensation in the amount of \$400.00 for "general expenses", I find that the Landlords have provided insufficient evidence to support what these general expenses were. As a result, I dismiss these in their entirety.

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.

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 Tenant to the Landlords

Item	Amount
October 2020 rental arrears	\$800.00
Cost to repainting and repair walls	\$300.00
Cost to replace damaged carpet	\$575.00
Cost of damaged door frame	\$550.00
Cost of missing blinds	\$800.00
Cost of cleaning	\$360.00
Cost of refuse disposal	\$240.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$1,600.00
Total Monetary Award	\$2,125.00

Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$2,125.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 19, 2021

Residential Tenancy Branch