



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, neither Tenant attended at any point during the 31-minute teleconference. All in attendance provided a solemn affirmation.

He 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 these packages were delivered on November 9, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been sufficiently served the Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s documentary evidence and will consider it when rendering this Decision. However, the Landlord also submitted late evidence, but this was not served to the Tenants. As such, this late evidence was 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

- 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.

The Landlord advised that the tenancy started on January 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on November 1, 2020. Rent was established at \$1,050.00 per month and was due on the first day of each month. A security deposit of \$525.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that a move-in inspection report was conducted with the Tenants on December 29, 2018. He also stated that the Tenants agreed to meet him on October 31, 2020 and November 1, 2020 to conduct a move-out inspection report, but they did not attend on either of these dates. He advised that he arranged to meet with the Tenants on November 4, 2020; however, the Tenants declined to sign the move-out inspection report after conducting the inspection. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

He submitted that the Tenants provided their forwarding address in writing on their notice to end their tenancy, dated October 1, 2020.

The Landlord advised that he is seeking compensation in the amount of **\$30.00** because the Tenants indicated on their notice to end tenancy that they would vacate the rental unit on October 31, 2020. However, they overheld and remained in the rental unit until November 1, 2020. As such, the Landlord is seeking compensation in the amount of the pro-rated rent for the day.

He advised that he is seeking compensation in the amount of **\$153.02** for the cost of two replacement electrical outlet covers that were missing at the end of the tenancy. As well, this amount of compensation is to cover two sets of blinds that were damaged at the end of the tenancy. These deficiencies were noted as per the inspection reports. As

well, he submitted pictures to support this damage, and he referred to an invoice to corroborate the cost of these repairs.

He advised that he is seeking compensation in the amount of **\$105.00** for the cost of cleaning the carpet because of stains and dirt left at the end of the tenancy. He referred to pictures provided to support the presence of these stains and he cited the invoice to corroborate the cost to clean the carpet.

He advised that he is seeking compensation in the amount of **\$125.00** for the cost of cleaning as the Tenants did not leave the rental unit in a re-rentable state at the end of the tenancy. He stated that the inside of the oven was dirty, that underneath the appliances were not cleaned, that the bathroom was dirty, and that the inside of the cupboards were not wiped down. He directed my attention to pictures submitted as documentary evidence to illustrate the extent of the cleaning that was required, and he cited the invoice of the person hired to complete the cleaning.

Finally, he advised that he is seeking compensation in the amount of **\$6.00** for the flat rate cost of disposing of refuse that the Tenants left behind, which included: moving boxes, recycling, and an old lawnmower bag.

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 was completed with the Tenants on December 29, 2018. Furthermore, a move-out inspection report was not signed by the Tenants even though the parties mutually agreed to meet on November 4, 2020 to conduct a move-out inspection. As I am satisfied that the parties agreed and met on November 4, 2020 to conduct a move-out inspection, I find that the Landlord did not extinguish his 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 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 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 in writing on October 1, 2020. As the tenancy ended when the Tenants gave up vacant possession of the rental unit on November 1, 2020, the Landlord then had 15 days from this point to either return the deposit in full or file an Application to claim against the deposit. As the Landlord did not extinguish his right to claim against the deposit and made this Application on November 4, 2020, I find that he complied with the *Act*. As such, 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 claim for compensation for rental loss, the undisputed evidence is that the Tenants overheld in the rental unit contrary to their notice to end the tenancy. As such, I am satisfied that the Landlord should be compensated for this rental loss in the amount of **\$34.52** for this one day, calculated as \$1,050.00 X 12 months / 365 days.

With respect to the Landlords' claims for compensation in the amount of \$153.02, I accept the undisputed evidence that the Tenants damaged these items and should be responsible to the replacement value. As such, I grant the Landlord a monetary award in the amount of **\$153.02** to satisfy these claims.

Regarding the Landlord's claim for compensation in the amount of \$105.00 for the cost of carpet cleaning, I am satisfied from the undisputed evidence that the Tenants soiled the carpets and did not clean them at the end of the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$105.00** to rectify this issue.

With respect to the Landlord's claim for compensation in the amount of \$125.00 for the cost of cleaning the rental unit, I am satisfied from the undisputed evidence that the Tenants did not leave the rental unit in a re-rentable state at the end of the tenancy. Consequently, I grant the Landlord a monetary award in the amount of **\$125.00** to satisfy this debt.

Finally, regarding the Landlord's claim for compensation in the amount of \$6.00 for the flat rate cost of disposing of refuse that the Tenants left behind, I am satisfied from the undisputed evidence that the Tenants left refuse behind that the Landlord was forced to dispose of. As a result, I grant the Landlord a monetary award in the amount of **\$6.00** to satisfy this claim.

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.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
November 2020 overholding rent	\$34.52
Cost of repairs	\$153.02
Cost of carpet cleaning	\$105.00
Cost of cleaning	\$125.00
Cost of refuse disposal	\$6.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$525.00
Total Monetary Award	\$1.46

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1.46** 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 19, 2021

Residential Tenancy Branch