



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On November 10, 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*.

K.M. and C.B. attended the hearing as agents for the Landlord. The Tenant did not attend the hearing at any point during the 17-minute teleconference. Only K.M. provided a solemn affirmation as C.B. did not make any submissions.

K.M. advised that she served the Notice of Hearing and evidence package to the Tenant on November 17, 2020 by registered mail (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on November 19, 2020. Based on this undisputed evidence, 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.

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.

K.M. advised 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 29, 2020. Rent was established at \$750.00 per month and was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

She stated that a move-in inspection report was conducted on July 30, 2020 and that a move-out inspection report was conducted on October 29, 2020. A copy of these reports was submitted as documentary evidence. She indicated that the Tenant provided a forwarding address in writing on the move-out inspection report.

She advised that the Landlord is seeking compensation in the amount of **\$750.00** because the Tenant signed a fixed term tenancy starting on August 1, 2020 that was to end on July 31, 2021. However, the Tenant provided written notice to end her tenancy on October 26, 2020, effective for October 29, 2020, and she gave up vacant possession of the rental unit on that date. K.M. advised that she advertised the rental unit on October 29, 2020 on three different online sites and there were no qualified prospective tenants. She stated that she was only able to re-rent the rental unit on January 1, 2021; however, the Landlord is only seeking to recover the rental loss that the Landlord suffered for November 2020.

She advised that the Landlord is also seeking compensation in the amount of **\$300.00** for the cost of liquidated damages, which was included as a term in the tenancy agreement. She stated that there was a total of 12 showings of the rental unit in November and December 2020. However, there were few qualified applicants until one was selected to rent the unit commencing on January 1, 2021.

K.M. advised that the Landlord is seeking compensation in the amount of **\$84.00** for the cost of carpet cleaning as the Tenant left the carpet fairly dirty at the end of the tenancy. She stated that the Tenant did not clean the rental unit prior to vacating the rental unit. She referenced the deficiencies noted in the move-out inspection report and she noted that carpet cleaning is required as per the tenancy agreement. She cited the invoice submitted as documentary evidence to support the cost of this claim.

K.M. advised that the Landlord is seeking compensation in the amount of **\$220.00** for the cost of removing furniture that the Tenant left behind in the rental unit. She advised that the Tenant left a queen-sized mattress that was stained with blood and box spring, as well as a heavy hide-a-bed that required dismantling prior to removal. She cited the invoice submitted to support the cost of this removal.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$30.00** for the cost of the dump fees for disposing of the furniture that the Tenant left behind. She submitted two invoices as documentary evidence to support these costs.

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 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 day.

Section 35 of the *Act* states that the Landlord 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 cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of 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 Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

As the undisputed evidence is that both a move-in and move-out inspection report was completed with the Tenant, I am satisfied that the Landlord did not extinguish their right to claim against the deposit.

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*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address on October 29, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on November 10, 2020. As the Landlord made this Application within 15 days of receiving the Tenant's forwarding address in writing, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's 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 Landlord's claim for lost rent of \$750.00 for November 2020, there is no dispute that the parties entered into a fixed term tenancy agreement from August 1, 2020 for a period of one year, ending on July 31, 2021. Yet, the tenancy effectively

ended when the Tenant gave up vacant possession of the rental unit on October 29, 2020.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I am satisfied that the Tenant gave notice to end the tenancy on October 26, 2020. At this point in the month, I find it reasonable to conclude that many prospective tenants looking for a new place to rent for November 1, 2020 had given notice earlier and likely would have secured a tenancy already. Thus, I am satisfied that by giving notice this late in the month, it would have significantly reduced the Landlord's likelihood of re-renting for November 1, 2020.

Based on the Landlord's undisputed evidence, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rented the unit as quickly as possible. Therefore, I am satisfied that the Tenant is responsible for the November 2020 rent. Consequently, I grant the Landlord a monetary award in the amount of **\$750.00** to satisfy this claim.

With respect to the Landlord's claim in the amount of \$300.00 for the cost of liquidated damages, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the undisputed evidence before me, there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. I am satisfied from the uncontested evidence that the Landlord sufficiently justified their efforts to re-rent the unit and that this amount was a genuine pre-estimate of this loss. As such, I grant the Landlord a monetary award in the amount of **\$300.00** to rectify this issue.

Regarding the Landlord's claim for compensation in the amount of \$84.00 for the cost of carpet cleaning, I am satisfied from the undisputed evidence that the Tenant left the rental unit and carpet dirty at the end of the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$84.00**.

With respect to the Landlord's claim for compensation in the amount of \$220.00 for the cost of removing furniture that the Tenant left behind in the rental unit, I am satisfied from the undisputed evidence that the Tenant left property behind that the Landlord was required to dispose of. Consequently, I grant the Landlord a monetary award in the amount of **\$220.00** to cover the cost of this rubbish removal.

Finally, regarding the Landlord's claim for compensation in the amount of \$30.00 for the cost of the dump fees for disposing of the furniture that the Tenant left behind, I am satisfied from the undisputed evidence that the Tenant left property behind that the Landlord had to pay to dispose of. As a result, I grant the Landlord a monetary award of **\$30.00** 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 these claims.

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

Calculation of Monetary Award Payable by the Tenant to the Landlord

November 2020 rent owed	\$750.00
Liquidated damages	\$300.00
Carpet cleaning	\$84.00
Furniture removal	\$220.00
Dump fees	\$30.00
Filing fee	\$100.00

Security deposit	-\$375.00
TOTAL MONETARY AWARD	\$1,109.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,109.00** 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: March 2, 2021

Residential Tenancy Branch