



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On November 6, 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.

K.L. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 41-minute teleconference.

She advised that a Notice of Hearing and evidence package was served to the Tenant by email on November 17, 2020, pursuant to a Substituted Service Decision dated November 12, 2020. She referenced confirmation of this email being sent and advised that there was no reply email that indicated that the message was not delivered. Based on this undisputed evidence, I am satisfied that Tenant M.L. has been sufficiently served the Notice of Hearing and evidence package in accordance with this Decision.

On the Landlord’s Application, another tenant was listed as a Respondent; however, the Landlord was unable to serve the Notice of Hearing and evidence package to this other tenant. As a result, this Decision and any Order will only be effective of the named Respondent, and the Style of Cause has been amended to reflect that. She also confirmed that the manner with which the Tenant was named as the Respondent on this Application should remain that way on the Style of Cause of this Decision.

Late evidence was submitted to the file by the Landlord on February 24, 2021, but K.L. was not certain if this evidence was served to the Tenant. As such, I have excluded this late evidence and will not consider it when rendering this Decision. Only the Landlord’s

evidence served with the Notice of Hearing package will be accepted and 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

- 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.

K.L. advised that the Tenant was added onto an existing tenancy agreement, and that the new tenancy started on March 21, 2020 for a fixed length of time ending June 30, 2021. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit sometime in October 2020. Rent was established at \$2,371.00 per month and was due on the first day of each month. A security deposit of \$1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She submitted that she had “no idea” if a move-in inspection or move-out inspection report was conducted with the Tenant. She also stated that the Tenant never provided a forwarding address in writing.

She advised that the Landlord is seeking compensation in the amounts of **\$2,371.00** for the November 2020 rent, **\$2,371.00** for the December 2020 rent, and **\$2,371.00** for the January 2021 rent. She stated that she believed the Tenant emailed the Landlord on October 16, 2020, advising that the tenancy would be ending; however, there was no

specific effective date for when it would end. The Landlord attempted to mitigate any losses by asking for access to the rental unit, in October 2020, to take photos and show the unit. She stated that the Landlord posted the rental unit as available on October 16, 2020 for \$2,380.00, which was more than the original rent. This advertisement was then amended on October 31, 2020 to \$2,280.00. The rental unit was eventually re-rented on December 7, 2020 for a monthly rent of \$2,320.00 per month. While she is not certain of the date this new tenancy started, she “assumed” that it started on December 7, 2020.

She advised that the Landlord is seeking compensation in the amounts of **\$253.05** and **\$230.61** for the cost of outstanding utilities owed. She referenced the tenancy agreement which indicated that the Tenant was responsible for paying the utilities. She also testified to the details of the utility bills.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$100.00** for a set of key fobs that the Tenant did not return. The tenancy agreement indicated that two sets were provided, but the Tenant only returned one. She stated that the Tenant provided a \$100.00 key fob deposit at the start of the tenancy and the Landlord is requesting permission to keep this deposit as compensation for the cost of having to replace this lost fob.

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(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 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. As the Landlord never received a forwarding address in writing from the Tenant, I am satisfied that the provisions of Section 38 of the *Act* were not yet enacted.

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 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, when reviewing the totality of the evidence before me, there is no dispute that the tenancy was a fixed-term tenancy, 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 Landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, 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.

Based on the undisputed evidence before me, the Tenant did not provide the Landlord 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 fixed-term tenancy and that the Landlord gained vacant possession of the rental unit on October 31, 2020, I am satisfied that this was the date that the Landlord was required to mitigate any loss suffered from this early end of

tenancy. While the Landlord's advertisements for re-renting the unit at a higher amount of rent would not be considered mitigating any loss, I am satisfied from the undisputed evidence that the Landlord re-advertised on October 31, 2020 for a reduced amount of rent. As the Tenant provided minimal time for the Landlord to successfully re-rent the unit, I am satisfied that she is responsible for the entirety of November 2020 rent. In addition, as the Landlord was unable to rent the unit for the first six days of December 2020, I am satisfied that the Tenant is responsible for these six days as well. Consequently, I grant the Landlord a monetary award in the amount of **\$2,371.00** for November 2020 rent and **\$467.70** for a portion of December 2020 rent, calculated as follows: $\$2,371.00 \times 12 \text{ months} / 365 \text{ days} \times 6 \text{ days}$.

With respect to the Landlord's claim for compensation in amounts of \$253.05 and \$230.61 for the cost of outstanding utilities, while the submissions of K.L. were undisputed, as the Landlord's late evidence was excluded, I find that there is no documentary evidence to support reliability of these figures. As such, I dismiss these claims in their entirety.

Finally, regarding the Landlord's claim for compensation in the amount of \$100.00 for replacing the key fob, based on the undisputed evidence before me, I am satisfied that the Tenant provided a \$100.00 deposit for the key fobs at the start of the tenancy, that two key fobs were provided, and that the Tenant did not return both fobs. As such, I find that the Landlord may keep the key fob deposit to satisfy this claim to replace the missing fob.

As the Landlord was partially 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 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

Item	Amount
November 2020 rent owing	\$2,371.00
Partial December 2020 rent owing	\$467.70
Recovery of Filing Fee	\$100.00
Security deposit	-\$1,100.00

Total Monetary Award	\$1,838.70
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Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,838.70** 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 1, 2021

Residential Tenancy Branch