



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

On November 30, 2020, the Landlords 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*.

Landlord D.C. attended the hearing and the Tenant attended the hearing as well, with his mother M.S. attending as a witness for the Tenant. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served the Notice of Hearing package and some evidence to the Tenant on December 11, 2020 by registered mail. The Tenant confirmed that he received this package and that he was able to view this evidence. Based on this undisputed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing package and some evidence. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of this Landlord’s evidence and will consider it when rendering this Decision.

She also advised that she served additional evidence to the Tenant on March 8, 2021 in person. The Tenant confirmed that he was able to view this evidence and he was prepared to respond to it. As such, I have accepted all of this Landlord’s evidence and will consider it when rendering this Decision.

As the Landlord did not serve the Notice of Hearing package to the other party noted as a Respondent on the Application, pursuant to Rule 3.1 of the Rules of Procedure, this

other party was removed from the Style of Cause of this Decision. This hearing will only proceed against the named Respondent.

The Tenant's mother advised that the Landlords were served the Tenant's evidence by hand three to four weeks ago. The Landlord confirmed that they received this evidence, that they were able to view it, and that she was prepared to respond to it. As such, I have accepted the Tenant'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

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- 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.

All parties agreed that the tenancy started on September 1, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on November 30, 2020. Rent was established at \$1,350.00 per month and was due on the first day of each month. A security deposit of \$675.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection report was conducted on August 29, 2019 and that a move-out inspection report was conducted on November 30, 2020 with the Tenant's mother. A copy of these reports was submitted as documentary evidence. In addition, they agreed the Tenant's forwarding address in writing was provided on November 30, 2020 and the Landlords returned \$375.00 to the Tenant on December 11, 2020.

The Landlord advised that they are seeking compensation in the amount of **\$150.00** for the cost of cleaning as the Tenant left the rental unit dirty at the end of the tenancy. She

testified that per the deficiencies noted in the move-out inspection report, there was urine around the toilet, shower grime, the baseboards were not wiped or vacuumed, the walls were marked and not wiped, the windows were not cleaned, the kitchen appliances were not pulled out and cleaned, and the cabinets were not wiped inside or outside. She referenced her digital evidence submitted to support her position. She stated that it took two cleaners five hours in total to return the rental unit to a re-rentable state. She referenced the invoice submitted as documentary evidence to support the cost of the cleaning.

M.S. advised that she did the cleaning and the bathroom was spotless. She stated that she conducted a first cleaning on November 14, 2020 and the Landlord took some pictures on November 15, 2020. She went back to the rental unit later and cleaned more after this. She observed that at some point, people had been entering the rental unit and one person had urinated in the toilet. She stated that she used the self-clean function of the oven to clean it and her pictures demonstrate the cleanliness of this. She stated that the window sills were in bad shape to start with. She submitted that she cleaned the fridge, that she pulled the kitchen appliances and cleaned behind them, that she took apart the washer and dryer, cleaned them and left them spotless, and that she vacuumed the stairs. She referenced evidence to support this position. With respect to the Landlord's invoice for the cleaners, she noted that the Landlord cited varying times for required cleaning and she suggested that this cleaning company was related to the new tenant somehow.

The Landlord denied that anyone had access to the rental unit. She stated that she was "maybe nitpicky" with respect to items that were deficient; however, the window tracks were not cleaned, the underside of the stove elements were dirty, and the walls appeared to have been wiped with a dirty cloth. She stated that her first estimate for cleaning was for \$200.00.

The Landlord advised that they are seeking compensation in the amount of **\$50.00** for the cost of repairing damage to the walls. She stated that the walls were freshly painted prior to the tenancy starting. She submitted that when kid's stickers were removed from the walls, paint was peeled off as well. There were also chips and dings in the wall from the Tenant moving items and furniture. She acknowledged that the Tenant painted some areas but also missed some spots. She referenced her evidence provided to support her position.

M.S. advised that the rental unit was not painted prior to move in. It is her belief that the Landlord submitted some pictures of the condition of the rental unit prior to when it was

cleaned and prior to the move-out inspection on November 30, 2020. She referenced evidence submitted to support her position that the rental unit was left in a re-rentable state.

The Tenant advised that the condition of the rental unit was “suitable” and that some things “may have been overlooked.” He stated that the rental unit was cleaned “to his standards” prior to his mother attending the move-out inspection.

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 ceases 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 have 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, I am satisfied that the Landlords 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 November 30, 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 compensation in the amounts of \$150.00 and \$50.00 for the costs to clean and to repair the walls, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When reviewing the totality of the evidence before me, the Landlord has provided an email dated November 16, 2020 which outlines some deficiencies that needed to be addressed, and she made submissions on many of these same deficiencies during the hearing. She submitted a considerable amount of evidence, and it is not clear which of this evidence was pertinent to the condition of the rental unit on November 30, 2020. I also note that M.S. testified to going back to the rental unit after this date to clean, and evidence was submitted to support this position on the state of the rental unit.

I also find it important to note that the Landlord admitted to being "nitpicky", and that the Tenant stated that the condition of the rental unit was "suitable", that the rental unit was cleaned "to his standards", and that some things "may have been overlooked." When

taking these statements into consideration and comparing them with the evidence submitted before me, I am satisfied that there were some areas that were not satisfactorily corrected to bring the rental unit up to a re-rentable state. However, I am also not satisfied from the Landlord's submissions that she justified the amount of cleaning and repairs being sought. As such, I am satisfied that the Landlord has only corroborated a monetary award in the amount of **\$100.00**.

As the Landlords were partially successful in these claims, I find that the Landlords are entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application. The Landlords have already returned \$375.00 of the security deposit within 15 days of receiving the Tenant's forwarding address in writing. As I have determined that the Landlords are only entitled to \$150.00 of that remaining deposit, I grant the Tenant a Monetary Order in the amount of **\$150.00** in the event that the Landlords do not return this amount.

Conclusion

The Tenant is provided with a conditional Monetary Order in the amount of **\$150.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 25, 2021

Residential Tenancy Branch