



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

On December 13, 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*.

Both Landlords attended the hearing; however, the Tenant did not attend at any point during the 42-minute teleconference. At the outset of the hearing, the Landlords were advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties in attendance provided a solemn affirmation.

They advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on December 23, 2020 (the registered mail tracking number is noted on the first page of this Decision). They submitted that the Tenant provided his forwarding address via text message in mid December 2020 and this is the address they used for service of the Notice of Hearing package. They read from a series of text messages with the Tenant which demonstrated that the Tenant provided this address for service. The registered mail tracking history indicated that this package was refused by the recipient on January 5, 2021. Based on this undisputed, solemnly affirmed testimony, I am satisfied on a balance of probabilities that the Tenant provided this forwarding address by text message. As such, I find that the Tenant was deemed to have received the Landlords’ Notice of Hearing and evidence package five days after it was mailed. Furthermore, 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 Landlords’ 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.

The Landlords advised that the tenancy started on July 2, 2019 and ended when the Tenant gave up vacant possession of the rental unit on November 30, 2020. Rent was established at \$1,700.00 per month and was due on the first day of each month. A security deposit of \$850.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They testified that they did not complete a move-in or move-out inspection report with the Tenant, as required by the *Act*.

They advised that they are seeking compensation in the amount of **\$1,700.00** because the Tenant did not pay any rent for November 2020. They provided copies of bank statements to support this position.

They advised that they are also seeking compensation in the amount of **\$5,700.00** because the Tenant only made partial payments of rent, or had partial rent paid by COVID supplements, between April 2020 to August 2020. They provided a copy of an agreed upon payment plan and copies of bank statements to corroborate this debt.

They advised that they are seeking compensation in the amount of **\$98.29** because they permitted the Tenant to remove the handle from the fridge; however, the Tenant did not replace this at the end of the tenancy. As well, the Tenant did not return the parts for the fridge, so the Landlords were required to purchase new parts. They

provided pictures of the fridge and they submitted a receipt to support the cost of the replacement parts.

They advised that they are seeking compensation in the amount of **\$369.20** because the Tenant left refuse on the property at the end of tenancy. They provided pictures of the amount of garbage left behind and they submitted a receipt to support the cost of the removal and tipping fee.

They advised that they are seeking compensation in the amount of **\$455.00** because the Tenant did not clean the rental unit or shampoo the carpets at the end of the tenancy. They testified to the specific deficiencies in the rental unit and they referenced pictures submitted as documentary evidence to support their submissions. A cleaner, who spent approximately six to seven hours with a co-worker, was hired to return the rental unit to a re-rentable state. They also provided an invoice to support the cost of this cleaning.

Finally, they advised that they are seeking compensation in the amount of **\$200.00** because the Tenant was provided with a microwave at the start of the tenancy; however, he stole this prior to vacating the rental unit. They referenced the tenancy agreement which indicated that this was provided at the start. They also submitted a picture at the start of tenancy when the microwave was in the rental unit, and a picture at the end of the tenancy where the microwave was missing. They stated that the microwave was approximately four years old and they submitted an estimate for a comparable microwave to support the cost of replacement.

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 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 day. As

well, the Landlords 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 Landlords 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 Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

As the undisputed evidence is that neither a move-in nor a move-out inspection report were completed with the Tenant, I am satisfied that the Landlords extinguished their right to claim against the deposit. However, this applies to damage to the rental unit, and as the Landlords were also claiming for rental arrears, I find that the Landlords were still permitted to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenant's 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 consistent and undisputed evidence before me, the Landlords received the Tenant's forwarding address by text message in December 2020. Furthermore, the Landlords made an Application, using this same address, to attempt to claim against the deposit on December 13, 2020. As the Landlords made this Application within 15 days of receiving the Tenant's forwarding address, and as the Landlords were still entitled to claim against the deposit, I am satisfied that the Landlords have 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 Landlords' 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 Landlords’ claim for rental loss of \$1,700.00 and \$5,700.00, I accept the Landlords’ undisputed evidence that the Tenant did not pay rent for the months stipulated. As such, I grant the Landlords a monetary award in the amount of **\$7,400.00** to satisfy this debt.

With respect to the Landlords’ claim for compensation in the amount of \$98.29 for the cost to replace the fridge door handle, I am satisfied from the undisputed evidence that there was a handle on the fridge at the start of the tenancy, that the Tenant removed this, and that he did not replace it at the end of the tenancy. As a result, I grant the Landlords a monetary award in the amount of **\$98.29** to rectify this issue.

Regarding the Landlords’ claim for compensation in the amount of \$369.20 for the cost of disposing of garbage left behind at the end of the tenancy, I accept the Landlords’ undisputed evidence that the Tenant left behind all manner of refuse at the end of the tenancy. Consequently, I grant the Landlords a monetary award in the amount of **\$369.20** to compensate the Landlords for having to deal with this issue.

With respect to the Landlords’ claims for compensation in the amount of \$455.00 for the cost of cleaning the rental unit, while neither a move-in inspection nor a move-out inspection report were completed, based on the undisputed documentary evidence provided, I am satisfied on a balance of probabilities that the Tenant did not clean the rental unit at the end of the tenancy. As such, I grant the Landlords a monetary award in the amount of **\$455.00** to satisfy this claim.

Finally, regarding the Landlords’ request for compensation in the amount of \$200.00 for replacement of a microwave that was stolen, I am satisfied that the Landlords provided this appliance at the start of the tenancy. Given that the microwave was approximately four years old and that the Landlords already benefitted from a portion of its useful life, I grant the Landlords a monetary award in the amount of **\$100.00** for the cost that I have determined to be equivalent to the remaining useful life of the microwave.

As the Landlords were successful in these claims, I find that the Landlords are 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 Landlords to retain the security deposit in partial satisfaction of these claims.

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

April to August 2020 rental arrears	\$5,700.00
November 2020 rental arrears	\$1,700.00
Fridge damage	\$98.29
Refuse disposal	\$369.20
Cleaning	\$455.00
Microwave loss	\$100.00
Filing fee	\$100.00
Security deposit	-\$850.00
TOTAL MONETARY AWARD	\$7,672.49

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$7,672.49** 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: April 28, 2021

Residential Tenancy Branch