



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMPERIAL TOWER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On December 22, 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*.

S.C. attended the hearing as an agent for the Landlord. D.S. attended hearing as an advocate for the Tenants. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

S.C. advised that he served two Notice of Hearing packages by posting them to the Tenants’ door on January 2, 2021 and D.S. confirmed that the Tenants received these packages. He did not have any opposition to how these packages were served. Based on this undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing packages.

S.C. also advised that he served the Landlord’s evidence to the Tenants on March 23 and 25, 2021 by registered mail. D.S. confirmed that the Tenants received these

packages. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

D.S. advised that the Tenants' evidence was served to the Landlord by registered mail on March 21, 2021; however, S.C. was uncertain whether this evidence was received by the Landlord (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was delivered on March 23, 2021. As such, I am satisfied that this evidence has been sufficiently served to the Landlord. Thus, this evidence will be accepted and considered when rendering this Decision.

All parties acknowledged the evidence submitted and 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.

All parties agreed that the tenancy started on January 1, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on December 17, 2020. Rent was established at an amount of \$1,600.00 per month and was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

Both parties agreed that a move-in inspection report was conducted on December 31, 2019. D.S. advised that the Tenants were never provided with a copy of this report pursuant to the *Act*. S.C. did not conduct the move-in inspection personally and he stated that he has a standard procedure where documents are typically provided.

However, he was “not sure” if this was provided to the Tenants. A copy of this report was submitted as documentary evidence.

Both parties also agreed that a move-out inspection report was conducted on December 17, 2020. D.S. advised that the Tenants were never provided with a copy of this report, contrary to the *Act*, until they were served with the Landlord’s evidence on or around March 23, 2021. S.C. advised that he did not have any knowledge of if a copy of this report was provided to the Tenants prior to service of the evidence, nor did he have any evidence to support that a copy of this report was provided to the Tenants before March 23, 2021. A copy of this report was submitted as documentary evidence.

All parties agreed that the Tenants provided a forwarding address via email on December 17, 2020 and this was the address that the Landlord used to make this Application.

S.C. submitted that the Landlord was seeking compensation in the amount of **\$180.00** because the Tenants did not leave the rental unit in a re-rentable condition. He referenced pictures submitted as documentary evidence that outlined deficiencies in the cleanliness of the rental unit. He also cited an invoice of the cost to clean the rental unit at \$30.00 per hour for six hours of cleaning.

D.S. advised that the Tenants cleaned to “the best of their abilities” and that the pictures that the Tenants relied on do not demonstrate any deficiencies in the condition of the rental unit. He stated that if anything was missed, a full cleaning is not warranted. He stated that the balcony appears dirty in the Landlord’s picture, but it is not indicated when this picture was taken. Moreover, the Landlord did not submit pictures of the condition of the rental unit before the tenancy started.

S.C. advised that the Tenants’ pictures were taken from a distance and are not detailed.

Analysis

Upon consideration of the evidence 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 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 day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

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.

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.

Section 18 of the *Regulations* outlines that a copy of the signed move-in inspection report must be provided to the Tenants promptly and in any event within 7 days after the condition inspection is completed. Furthermore, a copy of the signed move-out inspection report must be provided to the Tenants promptly and in any event within 15 days after the later of the date the condition inspection is completed, and the date the Landlord receives the Tenants’ forwarding address in writing.

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.”

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 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*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on December 17, 2020 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on that same date. While the Landlord made this Application within the 15-day frame to claim against the deposit, I find it important to note that the onus is on the Landlord to substantiate the claim. I do not find S.C.'s testimony that copies of the move-in or move-out inspection report were provided to the Tenants in accordance with the *Act* and *Regulations* to be compelling as his submissions were vague and uncertain, with no evidence to support that they were indeed provided. As such, I find it more likely than not that the Landlord extinguished the right to claim against the security deposit.

While the Landlord was still permitted to make an Application for compensation for damages, as the Landlord did not return the deposit in full within the 15 days due to the right to claim against the deposit being extinguished, I find that the doubling provisions do apply in this instance. As a result, I grant the Tenants a monetary award in the amount of **\$1,600.00**.

Regarding the Landlord's claims for compensation in the amount of \$180.00 to cover the cleaning expenses in bringing the rental unit back to a re-rentable state, even though the move-in and move-out inspection reports were not provided in accordance with the *Act* and *Regulations*, I do find it important to note that the *Regulations* allow for the consideration of a preponderance of evidence that supports the state of the rental unit documented.

When reviewing the evidence before me with respect to the state of cleanliness that the rental unit was left in, I have before me the Landlord's pictures of the rental unit where there were specific deficiencies outlined and a quote from a cleaning company confirming how much it would cost to address all the issues. While D.S. made submissions with respect to the Tenants' efforts to clean the rental unit prior to giving up vacant possession of the rental unit, I find it important to note that he stated that the Tenants cleaned to "the best of their abilities". In my view, this statement is suggestive and consistent with the Landlord's evidence that there were still some areas which were not cleaned thoroughly. As a result, I prefer the Landlord's evidence on this point and find it more likely than not that the rental unit was not cleaned or left in a re-rentable state at the end of the tenancy. Consequently, I am satisfied that the Landlord has established a claim in the amount of **\$180.00** to cover the costs associated with cleaning the rental unit.

As the Landlord was successful in this claim, 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

Doubling of security deposit	\$1,600.00
Filing fee	-\$100.00
Cleaning	-\$180.00
TOTAL MONETARY AWARD	\$1,320.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,320.00** 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: May 1, 2021

Residential Tenancy Branch