



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On July 13, 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 this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord’s Application was originally set down for a hearing on November 3, 2020 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decisions dated November 5, 2020 and January 29, 2021. This Application was then set down for a final, reconvened hearing on April 27, 2021 at 9:30 AM.

The Landlord attended the final, reconvened hearing with co-owner D.B. They also had A.B. attend as counsel for the Landlord. The Tenant attended the hearing as well, with A.M. attending as counsel for the Tenant. At the outset of all the hearings, 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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, with the exception of counsel, provided a solemn affirmation.

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 monetary 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.

All parties agreed that the tenancy started on January 1, 2015 and ended when the Tenant gave up vacant possession of the rental unit on July 31, 2020 by way of an Order of Possession (the relevant file number is noted on the first page of this Decision). Rent was established at an amount of \$3,000 per month and was due on the first day of each month. A security deposit of \$1,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord acknowledged that a move-out inspection report was not conducted.

All parties also agreed a forwarding address in writing was never provided.

In addition, all parties agreed that the Landlord was seeking, in this Application, compensation in the amounts of **\$4,196.75** for repairs, **\$1,740.00** for rent owed, and **\$5,000.00** for aggravated damages.

D.B. advised that the Tenant sublet the rental unit to different tenants, without the Landlord's consent, starting on or around March 2020, and the tenancy was ended because of this.

A.B. advised that a tenancy officially started with the new tenants after the original tenancy was ended by way of the Order of Possession. Regarding the Landlord's claim of **\$4,196.75**, he advised that the Tenant agreed to pay for repairs and maintenance to the rental unit, as per text messages submitted as documentary evidence. He stated that the Landlord's position is that rent was charged below market value, in lieu of the Tenant being responsible for all repairs and maintenance. However, he was not sure if this was stipulated in the tenancy agreement. He submitted that the Landlord is seeking compensation in the amounts of \$480.00 for a broken window, \$2,273.25 for a broken hot water tank, and \$1,443.50 for a broken furnace heater. He cited receipts submitted as documentary evidence to support these costs.

A.M. advised that the Landlord extinguished her right to claim against the deposit as she did not comply with the *Act* with respect to conducting move-in or move-out inspection reports. Furthermore, the tenancy agreement was not amended in writing; therefore, the Tenant was not responsible for repairs or maintenance to the rental unit, nor was the rental unit rented below market value in lieu of the Tenant being responsible for repairs. As such, the Landlord is responsible for the cost of these items being claimed. He submitted that the Landlord did not provide evidence to demonstrate that these alleged items were broken, and even if there was an issue with them, the Landlord has not demonstrated how it is beyond normal wear and tear.

Specifically, with respect to the Landlord's claim for the broken window, while the Tenant acknowledged to being responsible for breaking the window, A.M. advised that the new tenant paid to replace this, and the Landlord is seeking the compensation for it. Regarding the hot water tank and furnace, he submitted that the Landlord is responsible for these repairs and as they were at least six years old already, these are subject to ordinary wear and tear. Moreover, there is no evidence that the Landlord paid for any of the invoices submitted.

A.B. advised that the Landlord is seeking compensation in the amount of **\$1,740.00** because the Tenant illegally sublet the rental unit to another tenant, without the Landlord's consent, for an amount higher than his own rent. Therefore, the Landlord is seeking to recover this excess rent from the Tenant in the amount of \$580.00 for each month of April, May, and June 2020. He could not provide what Section of the *Act* that would permit this claim for compensation.

A.M. advised that for these months, the Tenant was paying his rent to the Landlord as per the terms of the tenancy agreement. He cited Section 7 of the *Schedule* in the *Residential Tenancy Regulations* (the "*Regulations*") which pertains to assignment or

sublet of a rental unit. He stated that an assignment requires that the same rent be charged whereas a sublet does not. As well, he submitted that the Landlord's claim for this is not even permitted under the *Act*.

Finally, A.B. advised that the Landlord is seeking compensation in the amount of **\$5,000.00** for aggravated damages. He stated that the Landlord suffered intangible damages due to intense stress and anxiety after the rental unit was illegally sublet. He referenced Policy Guideline # 16 and submitted that the Tenant deliberately attempted to hide this illegal sublet from the Landlord. Alternatively, he advised that the Landlord is seeking nominal damages for the infraction of the Landlord's legal rights and for the loss due to her feelings of stress.

A.M. advised that the submissions that the rental unit was rented under market value and of the Landlord's stress are new evidence. He submitted that the Landlord has not produced any evidence to support these claims of loss, nor has the Landlord provided any evidence of significant damage as a result of the Tenant's actions. He stated that the Landlord's property value has increased, that the rental unit can be rented for higher than what the Tenant was paying, and that aggravated damages is rarely awarded and does not apply in this instance. With respect to A.B.'s claim of nominal damages, this should not be considered as it was not a part of the Landlord's Application.

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 upon 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 upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

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*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

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*.

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 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 was never provided with the Tenant's forwarding address in writing and this Application was made prior to the tenancy officially ending. As such, I find that the doubling provisions do not apply to the security deposit in this instance. While A.M. submitted that the Landlord extinguished the right to claim against the deposit, I find it important to note that extinguishment only applies to claims of damage to the rental unit. As the Landlord also applied for other issues, I am satisfied that the Landlord is still entitled to claim against the deposit.

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."

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?

In addition, 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.

Before addressing the Landlord's claims, I find it important to note that counsel for both parties were unable to abide by the instructions outlined at the start of each hearing regarding conduct, as each were cautioned about interrupting when the other party was making submissions. Furthermore, counsel for both parties were ineffective in making relevant or cogent submissions during the hearings, and this was reflected in the quality of the documentary evidence submitted. Moreover, A.B. was unable to follow the instructions outlined in the Interim Decision dated November 5, 2020 regarding re-submissions of evidence.

Regardless, with respect to the Landlord's claim for compensation in the amount of \$4,196.75 for repairs to the rental unit, as the Tenant acknowledged that he was negligent for breaking the window, I accept that the Landlord suffered a loss to repair this and I grant the Landlord a monetary award in the amount of **\$480.00** to rectify this issue.

With respect to the other repair issues, there is insufficient evidence before me that the tenancy agreement indicated that rent was reduced in lieu of the Tenant conducting repairs to the rental unit. However, while generally the Landlord is responsible for repairs and maintenance, I am satisfied by the documentary evidence submitted that the Tenant clearly agreed to being responsible for repairs and maintenance of the rental unit. A.B. made limited submissions on what specifically was broken, and he primarily focused on the Tenant's messages confirming acceptance of the costs of repairs. Two receipts were submitted as documentary evidence. One was a heating receipt that was barely legible; however, a cost of \$1,443.50 was noted and was clearly visible. The

other receipt appeared to be completely illegible as no information could be discerned from this document.

When reviewing the totality of the evidence before me, I can reasonably infer that this first invoice is from a gas and heating company and it appears to be dated on or around June 22, 2020. As the Tenant was still in possession of the rental unit on this date and as I am satisfied that the Tenant was responsible for repairs and maintenance of the rental unit, I grant the Landlord a monetary award in the amount of **\$1,443.50** to satisfy this debt. With respect to the second invoice, given that the burden is on the Landlord to substantiate the claim, as this invoice contains no discernible information, I am not satisfied that the Landlord has substantiated any amount of compensation for this issue. As a result, I dismiss it in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$1,740.00 for excess rent that the Tenant charged the subtenant, the undisputed evidence is that the Tenant sublet the rental unit without the Landlord's consent. However, despite the Tenant renting this unit for more than what his own rent was, there are no provisions in the *Act* which would allow the Landlord to be eligible to recover this difference from the Tenant. As such, I dismiss this claim without leave to reapply.

Finally, regarding the Landlord's claim for compensation in the amount of \$5,000.00 for aggravated damages, the Landlord has provided insufficient compelling or persuasive evidence to substantiate any loss that would be considered under a claim for aggravated damages. I find that there is scant evidence before me that would corroborate or warrant any consideration for aggravated damages. As such, I dismiss this claim in its entirety.

Regarding A.B.'s claim for nominal damages, as this was not part of the Landlord's Application and was only brought up at the final, reconvened hearing, I find that this was an additional, veiled attempt at hopefully being granted some compensation in the event that an award for aggravated damages was unsuccessful. As such, I dismiss this in its entirety as well.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover \$50.00 of 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

Item	Amount
Window repair	\$480.00
Heating repair	\$1,443.50
Recovery of Filing Fee	\$50.00
Security deposit	-\$1,500.00
Total Monetary Award	\$473.50

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$473.50** 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: May 20, 2021

Residential Tenancy Branch