



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNCDL-S, FFL

Introduction

On January 27, 2021, the Landlord 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*.

The Landlord attended the hearing and T.C attended the hearing as an agent for the Landlord. However, the Tenant did not attend at any point during the 33-minute teleconference. At the outset of the hearing, the parties were 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 provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and some evidence was served to the Tenant by registered mail, to the dispute address, on January 31, 2021 (the registered mail tracking number is noted on the first page of this Decision). He stated that this package was served to this address as the Tenant was still occupying the rental unit at this time. Based on this undisputed evidence and solemnly affirmed testimony, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing package and some and evidence five days after it was mailed.

The Landlord advised that he did not amend his Application to adjust the amount of monetary compensation he was seeking, that he did not serve his new Monetary Order Worksheet to the Tenant, and that he also did not serve his late evidence to the Tenant. As such, I am not satisfied that any issues not included on the original Monetary Order Worksheet dated January 27, 2021 will be considered in this hearing. As well, only the evidence served with the Notice of Hearing package will be accepted and considered 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

- 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.

The Landlord advised that the tenancy started on July 1, 2019 and it ended on May 6, 2021 when the Tenant was physically evicted by way of a bailiff (an Order of Possession was granted on a previous Decision and the relevant file number is noted on the first page of this Decision). Rent was established at \$750.00 per month and was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

T.C. advised that neither a move-in inspection nor a move-out inspection report was conducted with the Tenant. She stated that the Tenant never provided a forwarding address in writing.

T.C. advised that the Landlord is seeking compensation in the amount of **\$7,500.00** for unpaid rent. She stated that the Tenant would pay cash for rent and that they would provide him with receipts. However, he did not pay any rent from August 2020 up until the date he was physically evicted by the bailiff in May 2020. As such, the Landlord is seeking compensation for all of this unpaid rent.

She advised that the Landlord is seeking compensation in the amount of **\$1,417.00** for the cost of cleaning the rental unit. However, this was an estimate as the Landlord did not know how much the cleaning would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

She advised that the Landlord is seeking compensation in the amount of **\$1,575.00** for the cost of junk and furniture disposal from the rental unit. However, this was an estimate as the Landlord did not know how much this would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

She advised that the Landlord is seeking compensation in the amount of **\$350.00** for the cost of a new fridge. However, this was an estimate as the Landlord did not know how much a new fridge would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

She advised that the Landlord is seeking compensation in the amount of **\$150.00** for the cost of a previous Dispute Resolution filing fee. She was not sure why she was specifically seeking \$150.00 as filing fees are typically \$100.00.

She advised that the Landlord is seeking compensation in the amount of **\$500.00** for the cost of pest control. However, this was an estimate as the Landlord did not know how much this would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

She advised that the Landlord is seeking compensation in the amount of **\$850.00** for the cost of repairing a fence that the Tenant broke during the tenancy. However, this was an estimate as the Landlord did not know how much the fence repair would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$150.00** for the cost of changing the locks to the rental unit. However, this was an estimate as the Landlord did not know how much this would cost at the time of the Application. As the Tenant was physically evicted on May 6, 2021, they now have accurate costs associated with this issue.

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 *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 Tenant has 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 neither a move-in nor a move-out inspection report was conducted, I am satisfied that the Landlord has extinguished the right to claim against the deposit. However, extinguishment pertains to claims for damage to the rental unit. As the Landlord has also applied for compensation for unpaid rent, which is not damage, I am satisfied that the Landlord may still 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.”

Regarding the Landlord’s claim for compensation in the amount of \$7,500.00 for the loss of rent up until the tenancy was ended by way of the bailiff, I am satisfied from the undisputed evidence that the Tenant failed to pay rent starting in August 2020. Furthermore, I am also satisfied that he occupied the rental unit until he was forcibly evicted by the bailiff, without paying any money to the Landlord. As a result, I grant the Landlord a monetary award in the amount of **\$7,500.00** to satisfy this claim.

With respect to the Landlord’s claims of compensation in the amounts of \$1,417.00, \$1,575.00, \$350.00, \$500.00, \$850.00, and \$150.00, these were claims where the costs were all incurred after the tenancy ended on May 6, 2021. As the Landlord only received many invoices of these costs so close to the hearing, and as the Landlord was unable to serve these to the Tenant, I dismiss these claims with leave to reapply.

However, regarding the Landlord’s claim for compensation in the amount of \$150.00 for the cost of the previous Dispute Resolution filing fee, as the Landlord did not apply to recover this as part of the previous hearing, I do not find that the Landlord can recover this previous fee in this Application. As such, this is dismissed without leave to reapply.

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

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

Rent arrears	\$7500.00
Filing fee	\$100.00
Security deposit	-\$375.00
TOTAL MONETARY AWARD	\$7,225.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$7,225.00** 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 31, 2021

Residential Tenancy Branch