



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On March 29, 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*.

M.G. and T.S. attended the hearing as agents for the Landlord and the Tenant attended the hearing as well. 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, 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, except for T.S., provided a solemn affirmation.

The Tenant advised that his name was incorrectly spelled on the Application and M.G. confirmed that the Application should be amended to reflect this correction. As such, the Style of Cause on the first page of this Decision was amended accordingly.

M.G. advised that the Notice of Hearing and evidence package was served to the Tenant by email on June 10, 2021 pursuant to a Substituted Service Decision that was rendered on June 1, 2021. The Tenant confirmed that he received this package that day. Based on this undisputed testimony, I am satisfied that the Tenant was duly served

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

The Tenant confirmed that he did not submit any evidence for consideration on this file.

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.

All parties agreed that the tenancy started on December 1, 2020 as a fixed term tenancy of one year ending on November 30, 2021. However, the tenancy ended when the Tenant gave his notice to end the tenancy on March 2, 2021 and subsequently gave up vacant possession of the rental unit on March 5, 2021. Rent was established at an amount of \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided his forwarding address by text message on March 5, 2021 and that he gave permission for the Landlord to keep the deposit.

M.G. advised that the Landlord is seeking compensation in the amount of **\$1,687.04** because the Tenant was in a fixed term tenancy but gave notice on March 2, 2021 to end his tenancy on March 5, 2021. She stated that the Tenant's rent cheque for March

2021 rent bounced. As she was able to re-rent the unit in late March 2021, the amount of rent owing for March 2021 from the Tenant is the pro-rated amount that the Tenant should be responsible for.

As well, she advised that the Landlord is seeking compensation in the amounts of **\$40.00** for an NSF fee for March 2021 rent and **\$25.00** for a late payment of rent fee for March 2021 rent. She referenced the terms in the tenancy agreement which permitted charges for these fees.

The Tenant did not make any submissions with respect to these claims.

M.G. also advised that the Landlord is seeking compensation in the amount of **\$200.00** because the Tenant left a mattress in the garbage area of the building when not permitted to. This amount was charged by the strata to the owner of the rental unit. She advised that a memo had been posted in the hallways and the garbage room stating, "Please be sure to dispose ONLY of regular household garbage in the garbage bin. Large items such as furniture are not permitted in the garbage room and are the Resident's responsibility to remove from the property. Any Owners/Residents caught disposing of these items by placing them in the garbage bin will receive an automatic fine and be charged for junk removal."

As well, she advised that this information was posted to the Landlord's website and the Tenant was provided with access to this site, so the Tenant would have been aware that this was not permitted. Furthermore, it is common sense that it would not be acceptable to dispose of a mattress in this manner. She referenced pictures, email correspondence, and other documentary evidence to corroborate the Landlord's position with respect to this claim.

The Tenant advised that there were no such memos posted around the building and he was never informed that he could not dispose of his mattress in this manner. He was never notified of any bylaw regarding this either and the security guard did not mention anything to him as he was disposing of the mattress. He stated that the Landlord's pictures do not demonstrate that this memo was posted in the garbage area of the building.

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 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 received the Tenant's forwarding address by text on March 5, 2021. While the Landlord made an Application, using this same address, to attempt to claim against the deposit on March 29, 2021, as the Landlord had the Tenant's consent to keep the deposit pursuant to Section 38 of the *Act*, 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 lost rent in the amount of \$1,687.04, there is no dispute that the tenancy was fixed term tenancy when the Tenant gave his notice to end the tenancy on March 2, 2021 that was effective for March 5, 2021.

Sections 44 and 45 of the *Act* set out how tenancies end in this instance. Given that the undisputed evidence is that the Tenant ended the fixed term early and that the Landlord

was unable to rent the unit for most of March 2021, I am satisfied that the Landlord is entitled to a monetary award in the amount of **\$1,687.04** to satisfy the loss for rent owing for the month of March 2021.

Regarding the Landlord's claims for compensation in the amounts of \$40.00 and \$25.00 for the NSF and late payment fees, as the undisputed evidence is that the Landlord was permitted to charge these fees pursuant to Section 7 of the *Residential Tenancy Regulations*, I am satisfied that that the Landlord is entitled to a monetary award in the amount of **\$65.00** to satisfy these debts.

Finally, with respect to the Landlord's claim for compensation in the amount of \$200.00 for the cost of disposing of the Tenant's mattress, I have before me a copy of a memo that M.G. advised was posted in common areas and the garbage area of the building. As well, I have her affirmed testimony that this was the case, as corroborated by an email from a strata agent. On the other hand, I have the Tenant's affirmed testimony that this memo was not posted throughout the building.

When weighing the conflicting testimony on a balance of probabilities, I find it more likely than not that this memo would have been posted in the garbage room, at the very least as it specifically speaks to what is permitted to be disposed of in the garbage area. Furthermore, based on common sense and ordinary human experience, I do not find it reasonable for anyone to conclude that this area was an acceptable place to leave a mattress. Given that the Tenant left the rental unit hurriedly, within three days of giving his notice, I find it more likely than not that the Tenant decided that this was the best manner to dispose of this mattress despite knowing that it was not appropriate. As such, I grant the Landlord a monetary award in the amount of \$200.00 to satisfy this debt.

As the Landlord was 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 partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of total Monetary Award Payable by the Tenant to the Landlord

Rental arrears for March 2021	\$1,687.04
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NSF fee	\$40.00
Late payment of rent fee	\$25.00
Mattress disposal	\$200.00
Filing fee	\$100.00
Security deposit	-\$900.00
TOTAL MONETARY AWARD	\$1,152.04

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,152.04** 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: August 26, 2021

Residential Tenancy Branch