



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

On January 20, 2021, 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 May 25, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated May 25, 2021. This Application was then set down for a final, reconvened hearing on September 23, 2021 at 11:00 AM.

Tenant C.M. attended the final, reconvened hearing; however, the Landlord did not attend at any point during the 11-minute teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:11 AM. The Applicant did not dial into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that Respondent C.M. was the only person who had called into this teleconference.

As the Landlord did not attend the hearing by 11:11 AM, I find that the Application for Dispute Resolution has been abandoned. Only the matters addressed in the hearing on May 25, 2021 will be considered. Any other claims made by the Landlord on this Application have been dismissed without leave to reapply.

At the original hearing, the Landlord advised that the Tenants were served the Notice of Hearing packages and some evidence by registered mail on January 23, 2021 and C.M. confirmed that they received these packages. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were duly served the Notice of Hearing packages and some evidence.

The Landlord then advised that she served additional evidence to the Tenants by registered mail on May 1, 2021. C.M. confirmed that they received the Landlord's additional evidence on or around May 18, 2021 and she referenced a picture of the postmark of this package indicating that this was actually sent on May 11, 2021. As this evidence must have been served to the Tenants at least 14 days prior to the hearing, even if it was mailed on May 1, 2021 as alleged by the Landlord, this evidence would still be considered late as it would take five days for it to be deemed received pursuant to Section 90 of the *Act*. As this additional evidence was late, I have excluded it and will not consider it when rendering this Decision. Only the evidence included with the Notice of Hearing package will be considered when rendering this Decision.

C.M. advised that they served their evidence to the Landlord by registered mail on March 29, 2021. The Landlord confirmed that she received the Tenants' evidence and that she could view the digital evidence. Based on this undisputed evidence, as this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted all of the Tenants' 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

- 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 April 15, 2019 and it ended when the Tenants gave up vacant possession of the rental unit on May 31, 2020. Rent was established at an amount of \$1,450.00 per month and was due on the first day of each month. A security deposit of \$725.00 and a pet damage deposit of \$700.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

As per a previous Decision (the relevant file number is noted on the first page of this Decision), the Tenants were awarded double their security deposit as the Landlord did not comply with the *Act*. As well, it was noted that the pet damage deposit was returned during the tenancy. It was also noted that a move-in inspection report was conducted at the start of the tenancy and that the Landlord did not give two opportunities to the Tenants to conduct a move-out inspection report, in accordance with the *Act*.

Regarding the Landlord's Application for monetary compensation, in the original hearing, the Landlord advised that she is seeking compensation in the amount of **\$615.25** because there was a substantial water leak underneath the sink in the bathroom. She stated that the fan was not working and that the Tenants did not report any of this to the Landlord. The cabinet was swollen, the walls were rotten, and as the bathroom was in good condition at the start of the tenancy, these needed to be repaired. She would have fixed this issue had it been reported earlier. She referenced pictures of this damage and an invoice for the cost of repairs that were submitted as documentary evidence to support this claim; however, she did not provide any evidence of the fan not functioning.

C.M. referenced a video submitted as evidence which demonstrates that there was no visible pool of water under the sink. She advised that they were not aware of a leak. She stated that they had a discussion with the Landlord about a mildew smell, but the Landlord brushed this off. She referenced a text message conversation dated April 29, 2019 when they advised the Landlord of a lack of ventilation in the rental unit. She

stated that the Landlord's invoice for this repair is misleading as the supplies are not itemized and the majority of the bill was for the call-out and labour.

The Landlord advised that the text that the Tenant referred to was in regard to kitchen ventilation due to smoke, and it had nothing to do with bathroom ventilation.

The Landlord is also seeking compensation in the amount of **\$200.00** for the cost of cleaning the rental unit as the Tenants did not leave the unit in a re-rentable state. She stated that the sink was black, there was corrosion around the faucet, garbage was left in drawers, the inside of the stove was not cleaned, the appliances and fridge drawers were not pulled out and cleaned, the floor was dirty and sticky, mould was found inside the washing machine, the grout in the bathroom was dirty, and the toilet was not cleaned. The Landlord referenced pictures of the condition of the rental unit, and she cited an invoice to support the cost of the cleaning. She stated that she hired her sister to clean at \$30.00 per hour.

C.M. advised that they cleaned the rental unit prior to giving up vacant possession and she referenced the timestamped video submitted to illustrate the condition the rental unit was left in. She cited documentary evidence demonstrating that they attempted to coordinate a move-out inspection with the Landlord, but they were not able to. She stated that there was no proof that the Landlord's cleaning estimate was legitimate, that the pictures that the Landlord served them were black and white, and that these pictures were not dated or time stamped.

The Landlord replied that it is not indicated anywhere that the pictures she served to the Tenants were required to be in colour.

Finally, the Landlord advised that she is seeking compensation in the amount of **\$380.00** for the dining room blinds that would not open or turn. She stated that she bought the rental unit in 2017 and that the unit and the blinds were "fairly new", though she is not sure how old the blinds were. A quote for the replacement cost of the blinds was not submitted.

C.M. advised that the blinds were opened and closed daily during the tenancy, that there was nothing wrong with them, and that they operated normally at the end of the tenancy. As well, she stated that the Landlord did not submit any evidence to support the actual replacement cost of this claim.

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 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 17 of the *Residential Tenancy Regulations* (the "*Regulations*") states that the Landlord must propose, to the Tenants, a second opportunity to attend a move-out inspection that is different from the first opportunity, and this must be done using the appropriate notice in the approved form.

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 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 in accordance with the *Act*.

As per the previous Decision and the testimony of the parties in this hearing, the undisputed evidence is that the Landlord did not provide the Tenants with at least two opportunities to attend a move-out inspection, with one of those opportunities being a final request to attend the move-out inspection using the approved form. As such, I am satisfied that the Landlord did not comply with the *Act* and *Regulations* in completing these reports. Therefore, I find that the Landlord has extinguished the right to claim against the Tenants' security deposit. Regardless, the previous Decision already dealt with this issue and the Tenants were awarded double the security 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 the damage to the bathroom in the amount of \$615.25, I find it important to note that as the Landlord did not comply with the *Act* regarding the move-out inspection report, there is no report to rely on. While a preponderance of evidence to the contrary can be considered, as the onus is on the Landlord to prove that the Tenants were responsible for this damage, when weighing both parties' evidence provided, I am not satisfied that the Landlord has established this claim in her favour, on a balance of probabilities. As such, I dismiss this claim in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$200.00 for the cost of cleaning the rental unit, again I note that there is no move-out report to rely on. Furthermore, should the Landlord want her documentary evidence to be considered, she must provide identical documents to the Tenants. As she submitted colour pictures to the Residential Tenancy Branch but the same pictures to the Tenants in black and white, I find that this is prejudicial to the Tenants as they do not have the same evidence in front of them. As a result, I find that I cannot consider these pictures that were submitted to the Residential Tenancy Branch. When reviewing the totality of the evidence that I can consider from both parties, I do not find that the Landlord has sufficiently justified her claim on a balance of probabilities. Consequently, I dismiss this in its entirety as well.

Finally, regarding the Landlord's claim for compensation in the amount of \$380.00 for replacement of the dining room blinds, apart from her testimony that these were broken, she has not submitted any documentary evidence to corroborate this allegation, nor has she provided any documentary evidence to support the cost to replace the blinds. Without any compelling or persuasive evidence to establish this claim, I dismiss this in its entirety.

As the Landlord did not attend the final, reconvened hearing, the remaining claims on her monetary order worksheet were dismissed without leave to reapply.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

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: September 26, 2021

Residential Tenancy Branch