



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

On July 5, 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 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 31-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

She advised that she served the Tenant with her Notice of Hearing and evidence package by email on or around August 20, 2021 pursuant to the substituted service Decision dated August 10, 2021. She also provided a proof of service to corroborate that this was done. Based on this undisputed evidence, I am satisfied that the Tenant has been duly served with the Landlord’s Notice of Hearing and evidence package. As such, I have accepted all of the Landlord’s documentary 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 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.

The Landlord advised that the tenancy started on August 29, 2020 and that the tenancy ended on June 30, 2021 when she regained vacant possession of the rental unit. Rent was established at \$2,250.00 per month and was due on the first day of each month. A security deposit of \$1,125.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that a move-in inspection report was conducted on August 29, 2020 and that a move-out inspection report was conducted on June 26, 2021 without the Tenant's presence. She referenced the Notice of Final Opportunity to Schedule a Condition Inspection form that was posted to the Tenant's door and placed in her mailbox on or around June 23, 2021. The form noted that the move-out inspection was scheduled for June 26, 2021 at 8:30 AM. A copy of the condition inspection reports was submitted as documentary evidence.

As well, she stated that the Tenant never provided her forwarding address in writing.

The Landlord advised that she is seeking compensation in the amount of **\$2,374.00** because the Tenant did not clean the rental unit before vacating and she left an enormous amount of property behind. Included in that were: furniture, a sofa, a mattress, and bed frames. In addition, there was a substantial amount of cleaning that was required and the yard needed maintenance as well, in order to bring the rental unit back to a re-rentable state.

She referenced an invoice submitted to support her cost to have all of this rectified. She noted that at least four dump runs were required to dispose of all the Tenant's

abandoned property. She cited the pictures submitted as documentary evidence to support her position with respect to the condition that the rental unit was left in.

The Landlord advised that she is seeking compensation in the amount of **\$100.00** because she paid to have a property manager attend to conduct the move-out inspection. She referenced a bank statement submitted as documentary evidence to support the cost of this.

Finally, the Landlord advised that she is seeking compensation in the amount of **\$1,275.00** because the Tenant was in arrears rent from April and May 2021. She submitted that the Tenant only paid \$1,200.00 for April 2021 and \$2,025.00 for May 2021. She cited the emails submitted as documentary evidence to corroborate the partial rent payments.

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.

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 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*.

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*.

The consistent and undisputed evidence is that a move-in inspection report was conducted with the Tenant and that the Tenant did not attend a move-out inspection after she was served a Notice of Final Opportunity pursuant to Section 17 of the *Residential Tenancy Regulations*. As such, a move-out inspection report was conducted in her absence. Given that I am satisfied that the Landlord completed these reports in accordance with the *Act*, I find that the Landlord has not extinguished the right to claim against the deposit.

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 security 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 evidence before me, I am satisfied that the tenancy ended on June 26, 2021 when the move-out inspection was completed. However, as the Tenant never provided a forwarding address in writing, the 15-day time period for the Landlord to deal with the deposit never began. Therefore, 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.”

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?

With respect to the Landlord’s claim for compensation in the amount of \$2,374.00 for her costs to return the rental unit to a re-rentable state, I am satisfied from the consistent and undisputed evidence that the Tenant left a considerable amount of property behind. As well, the Tenant clearly did not clean or maintain the rental unit prior to giving up vacant possession of the rental unit. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$2,374.00** to satisfy this claim.

Regarding the Landlord’s claims for compensation in the amount of \$100.00 for the cost of hiring a property manager, I find it important to note that the Landlord could have conducted this herself or had someone else attend to do it for her. It was not necessary to hire someone to conduct this for her. As such, I do not find it reasonable that the Tenant should be held responsible for the cost of the Landlord’s choice to hire someone to conduct duties that are within the Landlord’s responsibility. I dismiss this claim in its entirety.

Finally, with respect to the Landlord’s claim for compensation in the amount of \$1,275.00 for rental arrears, I am satisfied from the undisputed evidence that the Tenant did not pay April or May 2021 rent in full. Consequently, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$1,275.00** to satisfy this claim.

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 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 |
|-------------------------------------|-------------------|
| Cleaning and rubbish removal | \$2,374.00 |
| Rental arrears for April & May 2021 | \$1,275.00 |
| Recovery of Filing Fee | \$100.00 |
| Security deposit | -\$1,125.00 |
| Total Monetary Award | \$2,624.00 |

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$2,624.00** 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: January 20, 2022

Residential Tenancy Branch