



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On July 15, 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 and pet damage 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 make an appearance at any point during the 33-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.

The Landlord advised that she served the Tenant the Notice of Hearing and evidence package by registered mail on July 31, 2021 (the registered mail tracking number is noted on the first page of this Decision). She confirmed that this package was delivered to the Tenant. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, 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 this documentary evidence and will consider it when rendering this Decision.

The Tenant did not submit any documentary 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 and pet damage 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.

She advised that the tenancy started on October 1, 2016 and that the tenancy ended on June 30, 2021 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,100.00 per month and was due on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that a move-in inspection report was conducted on October 1, 2016. As well, she stated that the Tenant was provided, on June 3, 2021, with a final opportunity to attend a move-out inspection on June 30, 2021 at 1:00 PM. However, the Tenant did not attend so she conducted the inspection in the Tenant's absence. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

She stated that the Tenant provided her forwarding address in writing on June 1, 2021.

The Landlord advised that she is seeking compensation in the amount of **\$750.00** because the Tenant left property behind. As well, she submitted that the Tenant did not clean, that there was damage to the walls and carpets, and that the Tenant's pet soiled areas of the rental unit. She testified that she completed the cleaning and restored the unit to a re-rentable state at her own cost. She submitted that the total cost to bring this unit up to the same condition as at the start of tenancy far exceeded the amount of the deposits. She referenced her documentary evidence to support these claims.

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 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*.

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*.

As the consistent and undisputed evidence is that a move-in inspection report and a move-out inspection report was conducted, I am satisfied that the Landlord did complete these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposits.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenant’s security deposit and pet damage 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits 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 30, 2021, when the Tenant gave up vacant possession of the rental unit, and that

the Tenant provided her forwarding address in writing on or around June 1, 2021. As such, I find that the Landlord's Application was made within 15 days of the end of tenancy. As the Landlord's right to claim against the deposits was not extinguished, I am satisfied that the doubling provisions do not apply to the security deposit and pet damage 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 claims for compensation in the amount of \$750.00, I am satisfied from the undisputed evidence that the Tenant failed to return the rental unit to a reasonable state at the end of the tenancy. Furthermore, I am satisfied from the Landlord's evidence that she has substantiated her claims in its entirety. As such, I grant the Landlord a monetary award in the amount of **\$750.00** to satisfy these claims.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

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 disposal of property	\$750.00
Security deposit	-\$550.00
Doubling of pet damage deposit	-\$200.00

Filing fee	\$100.00
Total Monetary Award	\$100.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$100.00** 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 31, 2022

Residential Tenancy Branch