



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On August 15, 2021, the Landlords 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*.

Both Landlords attended the hearing. Tenant P.S. 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 provided a solemn affirmation.

Service of the Notice of Hearing packages, and evidence submitted by both parties, was addressed. All parties confirmed service of documents and evidence. As such, I have accepted all of the parties’ 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

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords 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 February 15, 2012 and that the tenancy ended on July 31, 2021 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,980.00 per month and was due on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on March 11, 2012 and that a move-out inspection was conducted on July 30, 2021. A copy of the move-in and move-out condition inspection report was submitted as documentary evidence.

As well, all parties agreed that the Tenants provided their forwarding address in writing to the Landlords on the move-out inspection report on July 30, 2021. They also agreed that the Landlords returned the pet damage deposit on or around August 10, 2021.

Landlord P.B. advised that they are seeking compensation in the amount of **\$475.15** because of two windows that were broken at the end of the tenancy. The broken bedroom window was observed at the time of the move-out inspection and the second broken window was discovered after the inspection. Landlord J.M advised that this window was clearly cracked from the inside. They referenced the evidence submitted to support this position.

The Tenant confirmed that the first window was broken, but there was no impact point, and their bed frame covered the window during the tenancy. He noted that there were several foot-long cracks in the plaster that occurred as a result of the house settling. He attributed the cracked window to this, or as a result of a recent heat wave that could have possibly cracked the window. Regarding the second window, he noted that this was not broken at the time of the move-out inspection and that the Landlords only messaged him about this on August 11, 2021. He referenced the evidence submitted to support their position.

The Landlords advised that they were seeking compensation in the amount of **\$276.15** because of broken window screens.

The Tenant agreed that they were responsible for this damage.

The Landlords advised that they were seeking compensation in the amount of **\$45.90** because of the replacement of a coat hook.

The Tenant agreed that they were responsible for this damage.

Finally, the Landlords advised that they were seeking compensation in the amount of **\$22.09** to replace two coat hooks that were painted over by the Tenants. These were not useable as is, so new coat hooks were purchased. They referenced the evidence submitted to support this position.

The Tenant advised that the move-inspection report indicated that the area near the coat hooks was “shabby” and that these hooks had been painted already. He stated that the Landlords never painted the rental unit and that after five years, the Tenants asked the Landlords if they could paint. He referenced the evidence submitted to support this position.

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 Landlords 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 upon day.

Section 35 of the *Act* states that the Landlords 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 upon day. As well, the Landlords must offer at least two opportunities for the Tenants 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 Landlords 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 Landlords to claim against a security deposit or pet deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords 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 Tenants 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*.

I am satisfied that a move-in inspection report and a move-out inspection report was conducted with the Tenants. As such, I find that the Landlords have not extinguished the right to claim against the security deposit or pet damage deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on July 31, 2021, when the Tenants returned the keys, and that the Landlords received the Tenants' forwarding address on July 30, 2021. As the Landlords' Application was made within 15 days of July 31, 2021, I do not find that the doubling provisions apply to the security deposit in this instance. Furthermore, as the Landlords returned the pet damage deposit to the Tenants within 15 days of July 31, 2021, I do not find that the doubling provisions apply to the pet damage deposit in this instance either.

With respect to the Landlords' 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 Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

With respect to the Landlords' claim for compensation in the amount of \$475.15 for the broken windows, I am not satisfied that the Landlords have adequately established that the Tenants broke both windows. As such, I grant the Landlords a monetary award in the amount of **\$300.00** to satisfy this claim for the one window.

With respect to the Landlords' claim for compensation in the amounts of \$276.15 and \$45.90, as the Tenant acknowledged being negligent for this damage, I grant the Landlords a monetary award in the amount of **\$322.05** to satisfy these claims.

Finally, regarding the Landlords' claim for compensation in the amount of \$22.09 for the cost to replace two coat hooks, I am not satisfied that the Landlords have established this claim and I dismiss it in its entirety.

As the Landlords were partially successful in these claims, I find that the Landlords are 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 Landlords to retain a portion of the security deposit in satisfaction of these claims.

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

Calculation of Monetary Award Payable by the Landlords to the Tenants

| Item | Amount |
|-----------------------------|-----------------|
| Window repair | -\$300.00 |
| Window screen | -\$276.15 |
| Coat hook | -\$45.90 |
| Recovery of Filing Fee | -\$100.00 |
| Security deposit | \$900.00 |
| Total Monetary Award | \$177.95 |

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$177.95** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: March 30, 2022

Residential Tenancy Branch