



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On October 12, 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 38 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 29-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Prior to commencing the hearing, the Landlord was asked to confirm the spelling of his name and it turned out that he incorrectly spelled his surname on his own Application. As such, the Style of Cause on the first page of this Decision has been amended to reflect this correction. Furthermore, the spelling of the Tenant’s surname was confirmed by the Landlord as accurate on his Application, and he did not wish to have this changed/amended. He was cautioned that any errors in the naming of parties may affect the enforceability of any Orders that may be granted.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by email on October 28, 2021, as per the Substituted Service Decision dated October 26, 2021. He submitted proof of this service and he stated that the Tenant responded to this email. Based on this undisputed testimony, I am satisfied that the Tenant has been 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.

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 monetary 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.

The Landlord advised that the tenancy started on January 15, 2016 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on September 30, 2021. Rent was established at an amount of \$981.00 per month and was due on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$100.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He confirmed that he never completed a move-in inspection report as he was out of town when the Tenant moved in. In addition, a move-out inspection report was not conducted as the Tenant would not meet. However, this is really a moot point as the Landlord failed to complete a move-in inspection report. In addition, he stated that the Tenant never provided a forwarding address in writing.

He advised that he was seeking compensation in the amount of **\$450.00** because of the state the Tenant left the rental unit in at the end of the tenancy. He testified that the Tenant caused a kitchen fire, which caused the ceiling to turn black and which required the stove and vent to have to be replaced. He stated that there was kitchen grease that was not cleaned up, and the rental unit was left in an unacceptable condition. As well, he testified that the Tenant constantly left a window open for his dog, which then caused a mouse infestation in the rental unit. He referenced pictures of the condition of the rental unit at the end of the tenancy and he cited an invoice of the pest control company, which confirmed that the mice accessed the rental unit through this open window.

He submitted that he spent four full months of his own time cleaning and repairing the rental unit. As well, he paid other people to help repair the rental unit to return it to a re-

rentable condition. However, he did not provide any documentary evidence to support the hiring of other people.

In addition, he advised that he was seeking compensation in the amount of **\$100.00** due to damage caused by the Tenant's dog. He claimed that because the Tenant left the window open for his dog, which subsequently caused the mouse infestation, this would be the reason to claim against the pet damage deposit. When he was informed that the infestation by the mice is not a pet issue, he then claimed that by leaving the window open, it allowed rain to enter the rental unit, damaging it. He was again informed that this was likely an indirect outcome and not directly damage caused by the Tenant's pet. The Landlord then advised that the Tenant's dog would damage the window frame by constantly entering and exiting through the window. He referenced the pictures submitted to support his 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 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 or pet damage deposit 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*.

With respect to the inspection reports, as a move-in inspection report was never completed by the Landlord, I am not satisfied that the Landlord complied with the requirements of the *Act* in completing this step. Regarding the move-out inspection report, as a move-in inspection report was not completed by the Landlord in accordance with the *Act*, this really is a moot point. As the Landlord did not comply with the *Act*, I find that the Landlord has extinguished the right to claim against the deposits.

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 and undisputed evidence before me, given that a forwarding address in writing was never provided, I am satisfied that there was no timeframe for the Landlord to act on the deposits. While the Landlord made this Application to claim against the deposits, as he extinguished the right to claim against the deposits, I find that the doubling provisions do apply to the security deposit and pet damage deposit in this instance. As such, I grant the Tenant a monetary award in the amount of **\$900.00** for the security deposit and **\$200.00** for the pet damage deposit, totalling **\$1,100.00**.

With respect to the Landlord's claims, 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 \$450.00 for the condition that the Tenant left the rental unit in, despite the Landlord not completing a move-in inspection report, based on the Landlord's undisputed evidence, I do not find it reasonable that the Tenant would have rented the unit in close to the same condition it was left in. As such, I am satisfied that the Tenant caused a substantial amount of damage to the rental unit that likely far exceeded the security deposit. However, as the Landlord only claimed against the deposit, I grant the Landlord a monetary award in the amount of **\$450.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$100.00 for pet damage, I do not accept the Landlord's submissions about the mouse infestation and the water damage from the window being left open to be damage caused directly by the pet. However, I do accept the Landlord's undisputed evidence that the Tenant's pet caused damage to the window frame by entering and exiting the rental unit through the window. As such, I grant the Landlord a monetary award in the amount of **\$100.00** to rectify this issue.

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 and pet damage deposit in satisfaction of these claims.

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

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Repairs to the rental unit	\$450.00
Pet damage	\$100.00
Recovery of Filing Fee	\$100.00
Doubling of security deposit	-\$900.00
Doubling of pet damage deposit	-\$200.00
Total Monetary Award	\$450.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$450.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord 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: May 31, 2022

Residential Tenancy Branch