



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On October 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 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing. The Tenant attended the hearing as well, with C.J. attending as an advocate for the Tenant. 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. As well, all parties in attendance provided a solemn affirmation.

Prior to commencing the hearing, C.J. requested an adjournment because the Tenant had been recently hospitalized with a brain injury. In addition, the Tenant’s mother, who was acting as her advocate, was ill and went to the hospital, and she had all of the paperwork. In addition, the Tenant’s mother’s mother had passed away, and all of these issues contributed to them being unprepared for the hearing. They did not submit any documentary evidence to corroborate any of these submissions.

The Landlords were asked their position on this request, and they advised that they would like to proceed as this has been scheduled for some time. As well, they noted that no documentary evidence had been submitted regarding any of these circumstances.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As there was no documentary evidence to support these submissions, and as they confirmed that they were aware of the hearing in November 2021, I find that the Tenant had ample time to submit evidence to support the submissions justifying an adjournment. Moreover, I find that there was ample time to prepare for the hearing or have someone else attend if the Tenant's mother was unable to. As such, I am satisfied that adjourning the hearing would be prejudicial to the Landlords. Consequently, I did not grant the Tenant's request for an adjournment.

Landlord S.S. advised that the Notice of Hearing and evidence package was served to the Tenant's mother by registered mail on October 24, 2021. He stated that this address was provided to him by her on October 13, 2021, via text message. The Tenant confirmed that she approved her mother providing this forwarding address on her behalf. As such, based on this undisputed testimony, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing and evidence package. I have accepted the Landlord's evidence and will consider it when rendering this Decision.

C.J. advised that no documentary evidence was submitted for consideration on this file due to the aforementioned circumstances. As well, C.J. stated that due to the Tenant's health concerns, and with C.J. becoming focussed on work, they were distracted and forgot about the timelines for service of evidence.

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 1, 2021; however, S.S. advised that they received the keys back on October 13, 2021, whereas the Tenant advised that the keys were placed in the mailbox on September 30, 2021. Rent was established at an amount of \$800.00 per month and was due on the first day of each month. A security deposit of \$400.00 was also paid. A copy of the addendum, signed by the Tenant, was submitted as documentary evidence.

S.S. confirmed that he never completed a move-in inspection report as required by the *Act*. As such, it was a moot point if a move-out inspection report was ever conducted or not.

In addition, as noted above, the Tenant acknowledged that she gave her mother permission to act as an advocate for her, and that her mother provided a forwarding address to the Landlords by text message on October 13, 2021.

S.S. advised that they were seeking compensation in the amount of **\$100.00** because of the state the Tenant left the rental unit in at the end of the tenancy. He testified that the Tenant put stickers on the walls and ceilings that needed to be removed. As well, the Tenant was provided with clean sheets at the beginning of the tenancy; however, she left those in a pile and dirty at the end of the tenancy. He added that the Tenant left items in the closet and that the closet was damaged.

He submitted that they hired someone to clean for three hours, at a cost of \$60.00; however, he did not submit any receipt to corroborate this. As well, he stated that the closet was brand new at the beginning of the tenancy, that he paid \$40.00 for it, and that he was forced to throw it out at the end of the tenancy. Regarding the walls, he initially stated that the walls were still damaged and were not fixed for the new tenants, but then he contradicted himself and noted that some small areas of the walls were fixed.

Landlord A.G. reiterated that the walls were damaged and that they were filled with stickers. She stated that the Tenant did not clean the rental unit, that they attempted to

clean it, and that they then hired a cleaner instead. She confirmed the state of the closet and the sheets. She stated that the closet was purchased from a friend, but it was brand new from Ikea.

C.J. advised that the Tenant's mother has pictures on her phone demonstrating that the Tenant left the sheets in a neat condition. She stated that only wipes and an extension cord were left in the closet, and that there was no damage to the closet. She submitted that the rental unit was cleaned at the end of the tenancy.

The Tenant advised that some LED lights were installed that could have damaged the walls. She also acknowledged that she left stickers on the walls and left a remote control behind. She refuted that the closet was damaged, but she confirmed that she "could have done a better job of cleaning" and that she "tried to get out as fast as possible."

S.S. advised that they were seeking compensation in the amount of **\$400.00** because the Tenant gave up vacant possession of the rental unit without giving the proper written notice.

A.G. advised that they could have asked for compensation for the entire month of October 2021 as they were unable to rent the unit until November 1, 2021.

C.J. advised that the Tenant left because she was given an eviction notice by the Landlords.

The Tenant advised that she believes she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and does not believe that she received a One Month Notice to End Tenancy for Cause. She stated that she "probably" did not give any written notice to end her tenancy.

S.S. confirmed that the Tenant did not give any written notice to end her tenancy and that the Tenant just gave up vacant possession of the rental unit on or around September 30, 2021. He stated that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on October 5, 2021. As well, he stated that he completed a One Month Notice to End Tenancy for Cause, but this form was never served to the Tenant.

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 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 Landlords 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 Landlords 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 Landlords 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 Landlords to claim against a security deposit or pet damage deposit 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 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 Landlords, I am not satisfied that the Landlords 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 Landlords in accordance with the *Act*, this really is a moot point. As the Landlords did not comply

with the *Act*, I find that the Landlords have extinguished the right to claim against the deposit for damage.

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 Tenant's 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 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address was authorized by the Tenant to be provided by her mother, and this was done on October 13, 2021. While the Landlords made this Application to claim against the deposit within 15 days of this date, as they extinguished the right to claim against the deposit, I find that the doubling provisions would ordinarily apply to the security deposit. However, as this provision only applies to damage to the rental unit, and as the Landlords have also applied to claim for rental loss, I do not find that the security deposit will be doubled in this instance.

With respect to the Landlords' 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 Landlords prove the amount of or value of the damage or loss?

- Did the Landlords act reasonably to minimize that damage or loss?

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlords' claim for compensation in the amount of \$100.00 for the cost to bring the rental unit up to a re-rentable state, I note that the consistent evidence is that the Tenant put stickers on the walls and ceiling and did not remove them at the end of the tenancy. As well, the Tenant confirmed that the rental unit was not likely cleaned to an acceptable standard. As such, I find that there likely is some validity to the Landlords' claims. However, the Landlords did not submit any documentary evidence to support the cost of cleaning or repairing of damage. While I am satisfied that the rental unit was likely not cleaned and that some damage likely occurred, without any documentary evidence to support the costs incurred, I grant the Landlords a monetary award in the amount of **\$50.00** only, to satisfy this claim.

Regarding the closet, I note that there was a dispute over whether there was damage to the closet and that the Landlords did not provide any documentary evidence to corroborate this damage. Furthermore, the Landlords did not submit any documentary evidence to support the age, condition, or price they originally paid for the closet. Consequently, I dismiss the Landlords' claim for reimbursement of the closet.

Regarding the Landlords' claim for compensation in the amount of \$400.00 for lost rent, Section 44 of the *Act* outlines all the manners with which a tenancy can end. Given that there is no evidence before me that the Landlords served the Tenant with a notice to end tenancy prior to her giving up vacant possession of the rental unit on or around September 30, 2021, and as there is no evidence before me that the Tenant gave written notice to end her tenancy in August 2021, to be effective for September 30, 2021, I find that the Tenant did not end the tenancy in accordance with the *Act*. As such, I am satisfied that the Landlords suffered a rental loss. As the Landlords were only seeking compensation for half a month of rental loss, I grant the Landlords a monetary award in the amount of **\$400.00** to rectify this issue.

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 the security deposit in partial 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 Tenant to the Landlords

Item	Amount
Cleaning	\$50.00
Rent	\$400.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$400.00
Total Monetary Award	\$150.00

Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$150.00** 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: June 16, 2022

Residential Tenancy Branch