



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On November 3, 2021, the Landlord applied for a Dispute Resolution proceeding 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*.

K.B. and B.P. attended the hearing as agents for the Landlord; however, neither Tenant attended the hearing at any point during the 30-minute teleconference. At the outset of the hearing, I informed the parties 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.

K.B. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on or around November 5, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). She testified that she did not check the tracking history of these packages, but they were not returned to sender so they must have been delivered. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenants were sufficiently served the Landlord’s Notice of Hearing and evidence packages. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of 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 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.

K.B. advised that the tenancy started on March 1, 2021, as a fixed term tenancy of one year. However, the tenancy ended early, when the Tenants gave up vacant possession of the rental unit on October 31, 2021. Rent was established at \$1,425.00 per month and was due on the first day of each month. A security deposit of \$712.50 and a pet damage deposit of \$200.00 were 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 March 1, 2021, and that a move-out inspection report was completed on October 31, 2021, without the Tenants present. She testified that a notice of final opportunity to conduct the move-out inspection was posted to their door on or around October 26, 2021, for October 31, 2021. A copy of these reports was submitted as documentary evidence for consideration.

As well, she stated that the Tenants provided a forwarding address by text message on October 31, 2021, and she referenced the screenshot, submitted as documentary evidence, to support this position.

B.P. advised that the Landlord is seeking compensation in the amount of **\$150.00** because the Tenants left the walls dirty, stained, and discoloured, and they required repainting at the end of the tenancy. He stated that the walls were painted at the start of

the tenancy. He referenced an invoice submitted to support the cost of this work completed, and he noted that the Landlord is only seeking a portion of the total cost of the painting job because this was reasonable.

K.B. advised that the Landlord is seeking compensation in the amount of **\$300.00** because the Tenants did not clean the rental unit at the end of the tenancy, and left the fridge, stove, bathroom, and windowsills, amongst other areas, dirty.

B.P. referenced the pictures submitted as documentary evidence to demonstrate that the Tenants made no efforts to clean the rental unit. He stated that there was no invoice for the cleaning as this was done by in-house staff, and this charge was a flat rate fee.

K.B. advised that the Landlord is seeking compensation in the amount of **\$150.00** because the Tenants punched two holes in the walls. To repair this, the drywall around the holes needed to be cut, a new piece of drywall needed to be inserted, then it required being mudded, sanded, and repainted.

B.P. referenced the pictures submitted as documentary evidence to illustrate the hole damage, and he stated that there was no invoice for the repair as this was also done by in-house staff.

K.B. advised that the Landlord is seeking compensation in the amount of **\$50.00** because the Tenants left multiple items behind, which required being disposed of. She cited pictures of the items that remained, and she stated that there was no invoice for this as it was done by the cleaners.

K.B. advised that the Landlord is seeking compensation in the amount of **\$150.00** because it appeared as if the Tenants' cats damaged the blinds. As well, the curtains were stained, dirty, and full of cat hair. She stated that the curtains were brand new at the start of the tenancy, and that the stains did not come out. She submitted that the Landlord had replacement blinds and curtains in their inventory, so new ones did not need to be purchased. However, this was the replacement cost of these items.

Finally, K.B. advised that the Landlord is seeking compensation in the amount of **\$500.00** because the Tenants ended the fixed term tenancy early, and there was a liquidated damages clause in the tenancy agreement.

B.P. advised that this amount represents the Landlord's costs incurred of the staff time required to show the rental unit, to complete administrative tasks related to re-renting a property, and to show the rental unit.

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 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 Landlord 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 Landlord 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 Landlord 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 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 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*.

With respect to the inspection reports, as a move-in inspection report was conducted, as K.B. solemnly affirmed that a notice of final opportunity was served to the Tenants prior to them giving up vacant possession of the rental unit, and as a move-out inspection report was then subsequently completed by the Landlord, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these steps. As such, I find that the Landlord has not 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 Tenants' 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 Tenants' 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that a forwarding address was provided on October 31, 2021, I am satisfied that the Landlord made this Application to claim against the deposits within 15 days of this date. As the Landlord has not extinguished the right to claim against the deposits, I find 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 Tenants 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 amounts of \$150.00, \$300.00, \$150.00, \$50.00, and \$150.00 because the Tenants did not leave the rental unit in a re-rentable state, I am satisfied from the solemnly affirmed testimony of K.B. and B.P. and the undisputed evidence that the Landlord had to incur these costs to return it to a satisfactory condition. As such, I grant the Landlord a monetary award in the total amount of **\$800.00** to satisfy these claims.

With respect to the Landlord's claim for compensation in the amount of \$500.00 for the cost of liquidated damages, there is no dispute that the parties entered into a fixed term tenancy agreement from March 1, 2021 for a period of one year. Yet, the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on October 31, 2021.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, the Landlord must make reasonable efforts to re-rent the rental unit. As well, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the solemnly affirmed testimony of K.B. and B.P. and the undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. I am also satisfied that the Landlord

made reasonable efforts to effectively mitigate this loss and re-rent the unit as quickly as possible, and that this amount was a genuine pre-estimate of this loss.

Consequently, I grant the Landlord a monetary award in the amount of **\$500.00** to satisfy 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 Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Painting	\$150.00
Cleaning	\$300.00
Wall damage repair	\$150.00
Garbage removal	\$50.00
Blind and curtain replacement	\$150.00
Liquidated damages	\$500.00
Recovery of filing fee	\$100.00
Security deposit	-\$712.50
Pet damage deposit	-\$200.00
Total Monetary Award	\$487.50

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$487.50** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: July 8, 2022

Residential Tenancy Branch