



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

On October 4, 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*.

T.D. attended the hearing as co-owner of the property and agent for Landlord D.S. He stated that he purchased a portion of the rental unit in April 2021. As such, the Style of Cause on the first page of this Decision has been amended to add him as an Applicant of this dispute. Neither Tenant made an appearance at any point during the 41-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.

He advised that a separate Notice of Hearing package was served to each Tenant by registered mail on October 12, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). He provided the tracking histories, which indicated that Tenant K.M. signed for both of these packages on October 13, 2021. Based on this undisputed evidence, I am satisfied that each Tenant has been duly served the Landlord’s Notice of Hearing package.

He then advised that his evidence was served to each Tenant by registered mail on April 22, 2022 (the tracking numbers are noted on the first page of this Decision). He provided the tracking histories which indicated that K.M. signed for one package on May 4, 2022, and Tenant A.V. did not pick up her package. Based on this undisputed evidence, I am satisfied that K.M. has been duly served the Landlord’s evidence package and that A.V. has been deemed to have received the Landlord’s evidence five

days after it was mailed. 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 most current tenancy started on February 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 30, 2021. Rent was established at an amount of \$2,500.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He confirmed that a move-in inspection report was conducted on February 1, 2020, and that a move-out inspection report was conducted on April 30, 2021. A copy of these reports was submitted as documentary evidence. In addition, he stated that the Tenants provided a forwarding address in writing by registered mail, on or around September 23, 2021. A copy of the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit was submitted as documentary evidence.

He advised that he was seeking compensation in the amounts of **\$273.29**, **\$49.76**, and **\$148.97** because of electricity, gas, and utilities that the Tenants owed as per the

addendum to the tenancy agreement. He referenced the bills submitted as documentary evidence to support this position.

He advised that he was seeking compensation in the amount of **\$1,423.84** for having to repair scratches and indentations in the walls, baseboards, and closets, and to re-paint them. He referenced the deficiencies marked on the move-out inspection report, and he cited the repairs completed on the invoice that was submitted as documentary evidence to support this position. He stated that the rental unit was freshly painted at the start of the tenancy.

He advised that he was seeking compensation in the amount of **\$2,475.20** for having to replace the carpets due to pet damage. He stated that the Tenants had five cats, when they were only permitted to have one, and there were three litter boxes. He testified that there was a strong smell of cat urine in the carpet and it had soaked into the underlay and flooring. He referenced the deficiencies marked on the move-out inspection report, and he cited the repairs completed on the invoice that was submitted as documentary evidence to support this position. He stated that the carpets were replaced in January 2020.

He advised that he was seeking compensation in the amount of **\$562.50** because the Tenants did not clean the rental unit and leave it in a re-rentable state at the end of the tenancy. He referenced the deficiencies marked on the move-out inspection report, and he cited the repairs completed on the invoice that was submitted as documentary evidence to support this position. This invoice indicated that two cleaners each spent five hours cleaning numerous parts of the rental unit that were left in disarray.

He advised that he was seeking compensation in the amount of **\$135.35** because the washing machine door was hanging from its hinges due to the Tenant's misuse. There was also a 4-inch-long crack in the door. He referenced the deficiencies marked on the move-out inspection report, and he cited the invoice that was submitted as documentary evidence to support this position.

Finally, he advised that he was seeking compensation in the amount of **\$15.00** for the cost to replace three lightbulbs that the Tenants did not replace at the end of the tenancy. He referenced the deficiencies marked on the move-out inspection report. As well, he stated that he did not have an invoice because he had leftover inventory of replacement bulbs.

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 and a move-out inspection report were completed by the Landlord, I am satisfied that the Landlord complied with the requirements of the *Act* in completing this step. 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 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 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 in writing was dated on September 23, 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, 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 \$273.29, \$49.76, and \$148.97 because of electricity, gas, and utilities that the Tenants owed,

based on the undisputed evidence, I grant the Landlord a monetary award in the total amount of **\$472.02** to satisfy these claims.

Regarding the Landlord's claim for compensation in the amount of \$1,423.84 for painting and repairing damage to the walls, baseboards, and closets, based on the undisputed evidence, I grant the Landlord a monetary award in the total amount of **\$1,423.84** to remedy this issue.

With respect to the Landlord's claim for compensation in the amount of \$2,475.20 for re-carpeting due to pet damage, I am satisfied from the undisputed evidence that the Tenants' pets damaged the carpeting beyond repair, and that it required being replaced. However, I find it important to note that Policy Guideline # 40 outlines the average useful life of carpet as approximately 10 years. As the Landlord has already received the benefit of one year of the carpet's useful life, I grant the Landlord a monetary award in the amount of **\$2,227.68** to rectify this claim.

Regarding the Landlord's claims for compensation in the amount of \$562.50 because the rental unit was not returned in a re-rentable state at the end of the tenancy, based on the undisputed evidence before me, I grant the Landlord a monetary award in the mount of **\$562.50** to remedy this issue.

With respect to the Landlord's claim for compensation in the amount of \$135.35 because the Tenants broke the washing machine door, based on the undisputed evidence, I grant the Landlord a monetary award in the amount of **\$135.35** to satisfy this claim.

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Finally, regarding the Landlord's claim for compensation in the amount of \$15.00 for the cost of replacing three, burnt out lightbulbs, based on the undisputed evidence, I grant the Landlord a monetary award in the total amount of **\$15.00** to remedy 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
Hydro bill	\$273.29
Gas bill	\$49.76
Utility bill	\$148.97
Painting and repairs	\$1,423.84
Carpet replacement	\$2,227.68
Cleaning	\$562.50
Washing machine door replacement	\$135.35
Light bulbs	\$15.00
Recovery of Filing Fee	\$100.00
Doubling of security deposit	-\$1,250.00
Doubling of pet damage deposit	-\$1,250.00
Total Monetary Award	\$2,436.39

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$2,436.39** 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 4, 2022

Residential Tenancy Branch