



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On January 17, 2022, 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 towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with P.S. and T.G. attending as agents for the Landlord; however, neither Tenant attended the hearing at any point during the 35-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.

T.G. advised that only one Notice of Hearing and evidence package was served to both Tenants, by registered mail on January 27, 2022 (the registered mail tracking number is noted on the first page of this Decision). He testified that this package was not returned to sender. As each Tenant was not served a separate Notice of Hearing package in accordance with Rule 3.1 of the Rules of Procedure, he was informed that they could only proceed against one Tenant. As such, he stated that they would like to proceed against Tenant A.A. Consequently, the Style of Cause on the first page of this Decision has been amended to remove the other Tenant as a Respondent on this dispute. Based on this undisputed, solemnly affirmed testimony, I am satisfied that A.A. was deemed to have received the Landlord’s Notice of Hearing and evidence package 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 a Monetary Order for compensation?
- Is the Landlord entitled to apply the security 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.

T.G. advised that the tenancy started on October 16, 2020, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on January 4, 2022. Rent was established at an amount of \$1,550.00 per month and was due on the first day of each month. He stated that a security deposit of \$775.00 was also paid, but a pet damage deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He stated that a move-in inspection report was completed on October 15, 2020, and that a move-out inspection report was not conducted with the Tenant as she informed the Landlord verbally on January 1, 2022, that she was moving out. A copy of the move-in inspection report was submitted as documentary evidence for consideration.

As well, he stated that the Tenant provided a forwarding address by email on January 5, 2022. He referenced the documentary evidence provided to support this submission.

He advised that the Landlord was seeking compensation in the amount of **\$890.00** and stated that this was broken down as: **\$350.00** for the cost of labour to remove the Tenant's garbage that she left behind, **\$100.00** for the cost of disposal of the garbage that was left behind, **\$300.00** for cleaning of the rental unit, and **\$140.00** for the cost of changing the locks. He referenced an invoice submitted as documentary evidence to

support the cost of these claims. However, he was not able to provide much detail about the specifics of these costs, and simply stated that these were what was charged out by the company responsible for completing the work.

Regarding the Landlord's claims for compensation in the amount of \$350.00 and \$100.00 for the costs related to garbage, he referenced the pictures submitted as documentary evidence to demonstrate the amount of refuse left behind by the Tenant, including furniture and fixtures.

With respect to the Landlord's claim for compensation in the amount of \$300.00 for cleaning, P.S. stated that the Tenant had four, small dogs in the rental unit, that the Tenant left holes in the walls, and that the fridge and oven were left dirty. He stated that he did not know how many hours were required to clean the rental unit.

T.G. advised that the cleaning took four to six hours to complete and when asked to describe any details or accounting of this invoice, he stated that they were not "super professional about it."

Regarding the Landlord's claims for compensation in the amount of \$140.00 to change the locks, T.G. advised that the cost to change the locks "could" have been "\$40.00 to \$60.00."

In addition, T.G. advised that the Landlord was also seeking compensation in the amount of **\$300.00** because the Landlord was required to replace three broken windows in the rental unit. He referenced the pictures and a written note, submitted as documentary evidence, 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 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 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 Landlord 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 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, I am satisfied that a move-in inspection report was conducted with the Tenant and that a move-out inspection report was not conducted as the Tenant gave up vacant possession of the rental unit with little notice. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenant’s security 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 deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord 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, I am satisfied that the tenancy effectively ended on January 4, 2022, and that a forwarding address was provided on January 5, 2022. The Landlord made this Application to claim against the deposit within 15 days of January 5, 2022. Therefore, I find that the doubling provisions do not apply to the security 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 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 total claim for compensation in the amount of \$1,190.00, I accept the consistent and undisputed evidence that the Tenant did not leave the rental unit in a re-rentable state at the end of tenancy and that some costs would have been incurred to remedy this. However, as noted above, the burden of proof is on the Landlord to establish these claims on a balance of probability. When reviewing the submissions made by the Landlord's side, I find it important to note that vague and ambiguous detail was provided when the individual claims were questioned. I find that this is supported by T.G.'s admission that they were not "super professional about it."

Given that I am not satisfied that the Landlord has provided sufficient testimony or documentary evidence to establish these claims in their entirety, I find that I am doubtful that the amounts charged on the invoice were accurate costs incurred to return the

rental unit to a re-rentable state. As such, I grant the Landlord a monetary award in the amount of **\$675.00**, which I have determined to be an amount that is commensurate with the evidence provided.

As the Landlord was partially 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 apply the security deposit in satisfaction of these debts.

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 Tenant to the Landlord

Item	Amount
Cost to return rental unit to re-rentable state	\$675.00
Recovery of filing fee	\$100.00
Security deposit	-\$775.00
Total Monetary Award	\$0

Conclusion

The Landlord is permitted to retain the security deposit in satisfaction of these claims.

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: September 13, 2022

Residential Tenancy Branch