



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

On March 22, 2022, the Landlord made an Application 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*.

R.N. and S.C. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 28-minute teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:58 PM. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agents for the Landlord were the only persons who had called into this 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.

R.N. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on March 29, 2022. He testified that this package was served to the

address for the Tenant that they received after conducting a credit report on February 15, 2022, which noted this as his current address. R.N. referenced the registered mail tracking number and the tracking history, which was submitted as documentary evidence, to demonstrate that this package was unclaimed and returned to sender (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received this 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.

R.N. advised that the tenancy started on May 19, 2020, as a one-year fixed term tenancy agreement ending on May 31, 2021. However, the tenancy ended when the Tenant skipped out and gave up vacant possession of the rental unit on April 26, 2021. Rent was established at an amount of \$2,443.00 per month and was due on the first day of each month. A security deposit of \$1,199.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He noted that a move-in inspection report was conducted by the previous owner of the rental unit on May 19, 2020, and that a move-out inspection report was not conducted

with the Tenant because he provided an email on April 26, 2021, indicating that he has left the keys and given up vacant possession of the rental unit. As such, a move-out inspection report was conducted that day without the Tenant in attendance. A copy of these reports was submitted as documentary evidence for consideration. He stated that the Tenant never provided a forwarding address in writing to the Landlord.

He advised that the Landlord was seeking compensation in the amounts of **\$2,443.00** for September 2020 rent, **\$1,943.00** for the balance of February 2021 rent, **\$25.00** for the NSF fee for February 2021 rent, **\$1,943.00** for the balance of April 2021 rent due to an extra payment of \$500.00 in March 2021, **\$25.00** for the NSF fee for April 2021 rent, and **\$1,285.08** for the pro-rated amount of rent for May 2021 because he was able to re-rent the unit for May 17, 2021. He referenced the documentary evidence submitted to support these claims.

In addition, he advised that the Landlord was seeking compensation in the amount of **\$400.00** because the Tenant did not leave the rental unit in a re-rentable state at the end of tenancy. He referred to the deficiencies noted in the move-out inspection report and stated that the appliances were dirty, that the carpet required steam cleaning several times, and that it took at least 10 hours to return the rental unit to a reasonable condition. He cited the documentary evidence submitted to support this claim.

He then advised that the Landlord was seeking compensation in the amount of **\$80.00** because the Tenant left garbage and furniture behind that required being disposed of. He referenced the documentary evidence submitted to support this claim.

Finally, he advised that the Landlord was seeking compensation in the amount of **\$242.40** because the Tenant did not return the mailbox key, that the Tenant damaged the deadbolt to the rental unit, and that the Tenant damaged other items in the rental unit. This was the cost to fix all those items, and he referenced the invoice submitted to support this claim.

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 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, as the undisputed evidence is that a move-in inspection report was conducted with the Tenant, and as a move-out inspection report could not be conducted with the Tenant because he abandoned the rental unit, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. 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, given that a forwarding address in writing was never provided by the Tenant, I am satisfied that the Landlord was not required to comply with the *Act* yet. As the Landlord has not extinguished the right to claim against the deposit, 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?

Regarding the Landlord's claims for lost rent and NSF fees, there is no dispute that the parties entered into a fixed term tenancy agreement from May 19, 2020, for a period of one year ending on May 31, 2021. However, the tenancy effectively ended early when the Tenant abandoned the rental unit and gave up vacant possession on April 26, 2021. Furthermore, the undisputed evidence is that the Tenant did not make the payments claimed, and did incur the NSF fees. As the Tenant did not end the tenancy in accordance with the *Act*, and as there is no evidence to refute the Landlord's evidence,

I am satisfied that the Landlord is entitled to a monetary award in the amount of **\$7,664.08** to satisfy the loss for rent and NSF fees owing from September 2020.

With respect to the Landlord's claims in the amounts of \$400.00, \$80.00, and \$242.40, given the uncontroverted documentary evidence of the Landlord, I am satisfied that the Landlord has established a monetary award in the amount of **\$722.40**.

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 in partial 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 Tenant to the Landlord

Item	Amount
September 2020 rent	\$2,443.00
February 2021 rent	\$1,943.00
February 2021 NSF fee	\$25.00
April 2021 rent	\$1,943.00
April 2021 NSF fee	\$25.00
May 2021 rent	\$1,285.08
Cleaning costs	\$400.00
Removal of refuse	\$80.00
Repair of damages	\$242.40
Recovery of filing fee	\$100.00
Security deposit	-\$1,199.00
Total Monetary Award	\$7,287.48

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$7,287.48** 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: October 6, 2022

Residential Tenancy Branch