



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

On May 16, 2022, 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 towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

H.S. attended the hearing as an agent for the Landlord; however, neither Tenant attended the hearing at any point during the 24-minute teleconference. At the outset of the hearing, I informed H.S. that recording of the hearing was prohibited. As well, she provided a solemn affirmation.

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 1:54 PM. Only an agent for the Applicant dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

H.S. advised that the Tenants never provided their forwarding address in writing, but they told the Landlord to leave the Notice of Hearing packages in the mailbox of the dispute address, and they would then go pick them up. She testified that a separate

Notice of Hearing and evidence package was left in the mailbox for each Tenant, and that Tenant P.A. picked up these packages on June 1, 2022. She referenced three videos, that were submitted as proof of service, to corroborate this position.

When reviewing this testimony, I find it important to note that these packages were not served to the Tenants in a manner in accordance with Section 89 of the *Act*. However, despite this, based on the evidence and solemnly affirmed testimony before me, I am satisfied that P.A. picked up these packages on June 1, 2022. As such, I find that the Tenants were duly served with the Landlord's Notice of Hearing packages. Consequently, this evidence was accepted and considered when rendering this Decision.

She confirmed that the Tenants did not submit any documentary evidence for consideration on this file.

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 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.

H.S. advised that the tenancy started on September 1, 2020, and that it ended when the Tenants gave up vacant possession of the rental unit on May 1, 2022. Rent was established at an amount of \$1,400 per month and was due on the first day of each

month. A security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She acknowledged that a move-in inspection report was never conducted by the Landlord.

She advised that the Landlord was seeking compensation in the amount of **\$1,400.00** because the Tenants gave notice via text message on April 24, 2022, to end their tenancy on May 1, 2022. Based on this late notice, the Landlord was not able to rent the unit out for May 2022 and suffered a rental loss. She referenced the documentary evidence to support this claim.

She also advised that the Landlord was seeking compensation in the amount of **\$550.00** because the Tenants damaged the rental unit and left refuse behind that the Landlord had to dispose of. A Monetary Order Worksheet was not completed by the Landlord, nor was there any indication of how this amount claimed was broken down. Moreover, there were no receipts or invoices submitted to substantiate the costs of these claims.

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.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a

security deposit for damage 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*.

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 Tenants' 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 Tenants' 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord never conducted a move-in inspection report. As such, the Landlord extinguished the right to claim against the security deposit for damage. Moreover, the Landlord was never provided with the Tenants' forwarding address in writing. As such, I find that the doubling provisions do not apply to the security deposit in this instance, despite the Landlord extinguishing the right to claim against the deposit. I find it important to note that extinguishment only applies to claims of damage to the rental unit. As the Landlord also applied for rental loss, I am satisfied that the Landlord is still entitled to claim against the deposit.

With respect to the Landlord's claims for loss, 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?

When reviewing the totality of the evidence before me, there is no dispute that the tenancy was a month-to-month tenancy and that the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on May 1, 2022. Sections 44 and 45 of the *Act* set out how tenancies end, and also specify that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In essence, the Tenants must have given one, whole month's notice in writing to end the tenancy. So, if the Tenants wanted to end their tenancy on April 30, 2022, they would have been required to give their written notice in March 2022. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord suffered a rental loss. Given that the Landlord had been provided with text message notification on April 24, 2022, that the Tenants would be giving up vacant possession on May 1, 2022, I am satisfied that the Landlord was put in a position where it would have been impossible to rent the unit for May 1, 2022, as the Tenants did not give any proper written notice to end their tenancy.

Consequently, I am satisfied that the Tenants are responsible for the rental loss that the Landlord is seeking compensation for. As such, I grant the Landlord a monetary award in the amount of **\$1,400.00**.

Regarding the Landlord's claim for compensation in the amount of \$550.00 for repairs and cleaning of the rental unit, I find it important to note that the Landlord did not complete a move-in inspection report to document the condition of the rental unit at the start of the tenancy. As such, there is nothing to compare the condition of the rental unit to at the end of the tenancy. Furthermore, the Landlord did not submit any documentation outlining how this amount specifically came to be, nor is there any documentary evidence of the costs spent by the Landlord to substantiate any of these claims. Ultimately, I am not satisfied that the Landlord has adequately justified these claims for compensation, and they are dismissed without leave to reapply.

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 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 Tenants to the Landlord

Item	Amount
May 2022 rent	\$1,400.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$700.00
Total Monetary Award	\$800.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$800.00** 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: January 30, 2023

Residential Tenancy Branch