



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDL, MNDCL-S, FFL

Introduction and Preliminary Matters

On December 21, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 29, 2021, this Application was originally set down to be heard on April 1, 2022, at 11:00 AM. However, this Application was subsequently adjourned, for reasons set forth in the Interim Decision dated April 1, 2022. This Application was then set down for a final, reconvened hearing on February 16, 2023, at 9:30 AM.

M.G. attended the final, reconvened hearing as an agent for the Landlord, and L.M. attended the final, reconvened hearing as counsel for the Landlord. However, the Tenant did not attend at any point during the 23-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, M.G. 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 9:30 AM and monitored the teleconference until 9:53 AM. Only representatives 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.

As per the Interim Decision of April 1, 2022, the Tenant had given up vacant possession of the rental unit on or around January 4, 2022. As such, the matter of an Order of Possession was no longer necessary to consider, and this final, reconvened hearing would only address the matters with respect to the Landlord's claims for monetary compensation. Furthermore, a significant portion of the Landlord's claims pertained to a matter that was in dispute through the Civil Resolution Tribunal, and a decision was still pending.

As a result, the original hearing was adjourned until this decision was rendered, and the parties were provided with specific instructions should they wish to submit further evidence for consideration on this file. L.M. advised that the Tenant's counsel had stopped representing him, and that the Tenant could be contacted through the Tenant's own personal email address. She stated that the Landlord sent an adjournment request to that specific email address on October 17, 2022, and the Tenant agreed to an adjournment. She then submitted that the Landlord's additional evidence was served to the Tenant, at this same email address, on January 13, 2023. In addition, she stated that this additional evidence was simply a copy of the Civil Resolution Tribunal decision, which would have been provide to the Tenant by that tribunal in any event. Regardless, as this evidence was served in accordance with the Interim Decision, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant did not submit any 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 a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- 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.

M.G. advised that the tenancy started on October 1, 2015, 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 \$2,386.00 per month, and was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

She stated that it is possible that a move-in inspection report was conducted with the Tenant at the start of the tenancy with the previous owner; however, this was not provided to the Landlord upon purchase of the rental unit. As well, L.M. submitted that the Tenant did not participate in a move-out inspection, despite being provided with a Notice of Final Opportunity to do so. She stated that the Tenant's counsel advised that the Tenant would not be participating in this inspection. Moreover, they confirmed that the Tenant never provided a forwarding address in writing at any point after the tenancy ended.

L.M. advised that the Landlord was seeking compensation in the amount of **\$19,000.00** for the cost of fines that the Tenant accrued based on violations of the strata bylaws. She referred to the Civil Resolution Tribunal decision, that was submitted as documentary evidence, to substantiate the position that it was determined that there was a bylaw prohibiting short-term rentals, that the Tenant breached this bylaw, that he forged a signature of a representative of the Landlord on a Form K document, and that the fines for the Tenant's breach were upheld. Moreover, she indicated that it was determined in the decision that the Tenant was found not to be credible, and that his conduct was "reprehensible".

L.M. then advised that the Landlord was also seeking compensation in the amount of **\$803.25** for the cost to repair damage to the walls and to replace fixtures that were removed in the rental unit. She stated that the Tenant mounted a TV on the wall, but did not remove it at the end of the tenancy. As a result, the holes in the walls required being patched and repainted. She referenced pictures submitted to substantiate the damage caused by the Tenant, and she cited the invoice submitted to corroborate the cost to repair this damage.

Finally, L.M. advised that the Landlord was also seeking compensation in the amount of **\$105.00** for the cost to clean the carpets because the Tenant left stains on the bedroom carpet. She referenced the move-out inspection report where the deficiencies were noted, and she cited the invoice submitted to support the cost to remedy this matter.

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 Regulation* (the "*Regulation*") 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 by the previous owner, and as the Tenant did not attend a move-out inspection despite being provided with a Notice of Final Opportunity, 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, a forwarding address was never provided by the Tenant to the Landlord. As such, I am satisfied that the requirements of Section 38 of the *Act* were never initiated. Furthermore, 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?

With respect to the Landlord's claim for compensation in the amount of \$19,000.00 for the cost of bylaw fines, the consistent and undisputed evidence before me is that the Civil Resolution Tribunal rendered a decision on this matter and determined that the Tenant breached the established bylaw prohibiting short-term rentals, that he fraudulently forged someone else's signature, and that the fines for the Tenant's breach was justified. As such, I grant the Landlord a monetary award in the amount of **\$19,000.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$803.25 for the cost to repair damage to the walls and to replace fixtures that were removed, based on the consistent and undisputed evidence before me, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenant was negligent for this damage. As such, I grant the Landlord a monetary award in the amount of **\$803.25** to remedy this matter.

Finally, with respect to the Landlord's claim for compensation in the amount of \$105.00 for the cost to clean the carpets, the consistent and undisputed evidence before me is that the Tenant stained the carpet, and that these deficiencies were noted on the move-out inspection report. Moreover, the Landlord produced an invoice to further support the cost of cleaning the carpet. As such, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenant did not leave the rental unit in a re-rentable state at the end of the tenancy. Consequently, I grant the Landlord a monetary award in the amount of **\$105.00** to rectify this claim.

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.

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

Bylaw fines	\$19,000.00
Repainting and repairing the rental unit	\$803.25
Carpet cleaning	\$105.00
Recovery of filing fee	\$100.00

Security deposit	-\$1,050.00
TOTAL MONETARY AWARD	\$18,958.25

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$18,958.25** 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: February 25, 2023

Residential Tenancy Branch