



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

On September 8, 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 and pet damage 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; however, neither Tenant attended at any point during the 34-minute teleconference. The Landlord 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 2:04 PM. Only 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.

The Landlord advised that a separate Notice of Hearing and evidence package was served to each Tenant by email, pursuant to the Substituted Service Decision dated September 26, 2022. The Landlord also submitted proof of service to corroborate this being done. Based on this undisputed evidence, I am satisfied that the Tenants have been sufficiently served the Landlord’s Notice of Hearing and evidence packages. 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 and pet damage 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.

The Landlord advised that the tenancy started on March 1, 2021, and that the Tenants gave up vacant possession of the rental unit on or around September 3, 2022. Rent was established at an amount of \$3,150.00 per month and was due on the first day of each month. A security deposit of \$1,575.00 and a pet damage deposit of \$787.50 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He confirmed that neither a move-in inspection report nor a move-out inspection report was completed with the Tenants.

In the Landlord's Application, he noted that he was seeking compensation in the amount of **\$3,150.00** because the "Tenant did not pay rent for August 2022, did not move out till Sept 3, 2022, so she owes partial rent for September." He testified that the Tenants did not pay any rent for August 2022, and when the Tenants did pay rent, it would either be by e-transfer or by cash.

He then advised in his Application that he was seeking compensation in the amount of **\$2,362.50** because the “The tenants left the house in a very messy condition, with garbage throughout the house, carpets are soiled and damage to kitchen.” However, he did not submit a Monetary Order Worksheet outlining how this claim for compensation was specifically broken down.

Analysis

Upon consideration of the evidence 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 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 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 the undisputed evidence is that neither a move-in inspection report nor a move-out inspection report was conducted, I am satisfied that the Landlord did not comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has extinguished the right to claim against the deposits for damage.

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, a forwarding address in writing was never provided to the Landlord by the Tenants. As such, I am satisfied that this Section of the *Act* was never initiated by the Tenants.

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 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 claim for compensation in the amount of \$3,150.00 for August 2022 rent, when reviewing the undisputed evidence before me, as the Tenants did not pay any rent for August 2022, I grant the Landlord a monetary award in the amount of \$3,150.00 to satisfy this debt. The Landlord can make a separate claim for compensation against the Tenants for September 2022 rental loss.

With respect to the Landlord's claim for compensation in the amounts of \$2,362.50 for damages to the rental unit, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Landlord applied for a Monetary Order for compensation in the amount of \$2,362.50, and he did not complete a Monetary Order Worksheet to outline the breakdown of this claim. Moreover, there is no discernible breakdown of this claim anywhere in his Application. Given this, I find that it would be prejudicial to proceed as the Landlord has not provided the Tenants with a fair opportunity to understand the claims that are being made.

Consequently, I do not find that the Landlord has made it abundantly clear to any party of the exact amounts he believes is owed by the Tenants. As I am not satisfied that the Landlord outlined his claim precisely, with clarity, in accordance with the *Act*, I do not find that the Landlord has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss the Landlord's Application for this compensation with 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 and pet damage deposit in partial satisfaction of this debt.

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

Rental loss for August 2022	\$3,150.00
Filing fee	\$100.00

Security deposit	-\$1,575.00
Pet damage deposit	-\$787.50
TOTAL MONETARY AWARD	\$887.50

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$887.50** 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, 2023

Residential Tenancy Branch