



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL, MNDCL, FFL

Introduction

On September 26, 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*.

The Landlord attended the hearing with G.S. attending as an agent for the Landlord. As such, the Style of Cause on the first page of this Decision was amended to remove G.S. as a Landlord. The Tenant did not attend the hearing at any point during the 19-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.

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 1:49 PM. Only the Applicant and her agent 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 her Notice of Hearing and evidence package was served to

the Tenant by email on October 28, 2022, as per the Substituted Service Decision dated October 26, 2022. She testified that she did not receive an email back indicating that this message was undeliverable. Based on this solemnly affirmed testimony, I am satisfied that the Tenant has been duly served this package. As such, I have accepted the Landlord's documentary 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.

The Landlord testified that the tenancy started on October 1, 2020, and that the Tenant gave written notice on August 17, 2022, to end her tenancy. However, she stated that the Tenant never paid any rent for September 2022, so she declared the unit abandoned and took over possession of the rental unit on September 18, 2022, despite the Tenant's notice being effective for September 30, 2022, in accordance with the *Act*. Rent was established at an amount of \$1,100.00 per month and was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As well, she confirmed that a move-in inspection report was conducted with the Tenant on September 27, 2020, and a copy of this report was submitted as documentary evidence for consideration. She then stated that a move-out inspection report was not completed with the Tenant. She testified that multiple attempts were made to coordinate

this with the Tenant, but the Tenant could not attend those suggested meetings. As such, she conducted the move-out inspection by herself on September 18, 2022. She acknowledged that she never served the Tenant with a Notice of Final Opportunity to Schedule an Inspection. A copy of the inspection reports was submitted as documentary evidence for consideration.

She stated that the Tenant never provided a forwarding address in writing.

She advised that she was seeking compensation in the amount of **\$650.00** because the Tenant did not pay any rent for September 2022, and this compensation is for September 1 to September 15, 2022.

In the Landlord's Application, she noted that she was seeking compensation in the amount of **\$100.00** because there were "minor damages", because the rental unit was not "properly cleaned and is dirty", and because the Tenant left "rubbish and discarded items" behind. She referenced the inspection reports and photos submitted as documentary evidence to support this claim.

Finally, the Landlord noted in her Application, that she was seeking compensation in the amount of **\$199.83** because the Tenant did not return the keys to the rental unit or mailbox, so these were re-keyed. She referenced the invoice submitted as documentary evidence to corroborate this claim.

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 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 has 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, while the Landlord conducted a move-in inspection report with the Tenant, it is not clear to me why the Landlord decided that September 18, 2022, would be the end of the tenancy as Section 45 of the *Act* notes that the Tenant’s notice to end tenancy would be effective for September 30, 2022. Moreover, as the undisputed evidence is that the Landlord never provided the Tenant with a Notice of Final Opportunity to Schedule an Inspection, I am satisfied that the Landlord did not comply with the *Act* in conducting a move-out inspection report. Again, this is notwithstanding the fact that this was done on September 18, 2022, for some reason. Regardless, as I am satisfied that the Landlord did not comply with the requirements of the *Act* in completing these reports, I find that the Landlord has extinguished the right to claim against the deposit for damage. However, as the Landlord has also made a claim for compensation for rent, this would not be considered 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 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 undisputed evidence before me, the Tenant never provided a forwarding address to the Landlord. As such, the requirements of this Section of the *Act* were never enacted by the Tenant. Furthermore, while the Landlord extinguished her right to claim against the deposit for damage to the rental unit, as she also claimed for rental loss, I do not find that the doubling provisions of Section 38 of the *Act* apply 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 \$650.00 for a portion of September 2022 rent, Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant 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. This means that the Tenant's notice to end tenancy would have been effective for September 30, 2022, and that she would have been responsible for paying all of September 2022 rent.

Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

When reviewing the undisputed evidence before me, I find it important to note that the Tenant did not pay any rent for September 2022; however, as the Landlord was seeking compensation from September 1 to September 15, 2022, I grant the Landlord a monetary award in the amount of **\$550.00**, not \$650.00, to satisfy this claim as this would be the equivalent of a half month's rent. This is of course despite the Landlord taking over vacant possession of the rental unit contrary to the *Act*.

Regarding the Landlord's claim for compensation in the amount of \$100.00 because of minor damage, lack of proper cleaning, and refuse that was left behind, based on the consistent and undisputed evidence before me, I am satisfied that the Tenant was negligent for these deficiencies. As such, I grant the Landlord a monetary award in the amount of **\$100.00** to remedy this matter.

Finally, with respect to the Landlord's claim for compensation in the amount of \$199.83 because the Tenant did not return the keys to the rental unit or mailbox, based on the consistent and undisputed evidence before me, I am satisfied that the Tenant should be responsible for these costs. As such, I grant the Landlord a monetary award in the amount of **\$199.83** 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. 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

| | |
|--|-----------------|
| Rental arrears for September 2022 | \$550.00 |
| Damage, cleaning, and disposal of refuse | \$100.00 |
| Lock re-keying | \$199.83 |
| Filing fee | \$100.00 |
| Security deposit | -\$550.00 |
| TOTAL MONETARY AWARD | \$399.83 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$399.83** 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: July 18, 2023

Residential Tenancy Branch