



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SOUTHVIEW GARDENS LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL, FFL

Introduction

On November 7, 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 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.T. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 40-minute teleconference. At the outset of the hearing, I informed L.T. that recording of the hearing was prohibited, and she was 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 2:10 PM. Only a representative for the Landlord 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 L.T. was the only other person who had called into this teleconference.

She advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on November 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). She testified that this was sent to the

forwarding address provided by the Tenant on the move-out inspection report, and that this package was delivered. Based on this undisputed evidence, I am satisfied that the Tenant was duly 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.

She then advised that an amendment was served to the Tenant by email on February 13, 2023, to two different email addresses for the Tenant that had previously been agreed upon. The Landlord amended the Application seeking to increase the amount of the Monetary Order for compensation. She stated that these emails were not sent back as undeliverable. Based on this solemnly affirmed testimony, I am satisfied that the Tenant has received the Landlord's amendment.

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.

L.T. advised that the most current tenancy agreement started on April 1, 2022, and that the tenancy ended when the Tenant was forced to give up vacant possession of the rental unit on January 25, 2023, by way of a bailiff physically evicting him. Rent was established at an amount of \$1,124.00 per month and was due on the first day of each month. A security deposit of \$520.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She testified that a move-in inspection report was conducted with the Tenant when he originally moved in on October 1, 2017. She then submitted that a move-out inspection report was conducted with the Tenant on January 25, 2023. She referenced a copy of this report submitted as documentary evidence. As noted above, the Tenant provided his forwarding address on the move-out inspection report on January 25, 2023.

She advised that the Landlord was seeking compensation in the amount of **\$3,372.00** because the Tenant did not pay any rent for November and December 2022, or January 2023. She cited the ledger provided as documentary evidence to support this claim.

She then advised that the Landlord was seeking compensation in the amount of **\$25.00** because the Tenant's October 2022 rent cheque went NSF, and she referenced the tenancy agreement which permitted this to be charged in this instance.

She also advised that the Landlord was seeking compensation in the amount of **\$3,100.00** for the cost of having to hire a bailiff to have the Tenant physically removed. She referenced the invoice submitted as documentary evidence to substantiate that the Landlord paid this amount for the bailiff.

She advised that the Landlord was seeking compensation in the amount of **\$120.00** for the cost of filing the Writ of Possession in the Supreme Court, and she cited the receipt submitted to support this claim.

Finally, she advised that the Landlord was seeking compensation in the amount of **\$1,301.69** for the costs to clean the rental unit, and to dispose of refuse that the Tenant left behind, in order to return it to a re-rentable state. She referenced the move-out inspection report that documented the deficiencies in the rental unit, as well as the invoice submitted to corroborate the costs of returning the rental unit to a re-rentable state.

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 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 a move-in inspection report and a move-out inspection report was completed by the Landlord with the Tenant, 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 and pet damage 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, while a forwarding address was provided by the Tenant on January 25, 2023, the Landlord made this Application well prior to the date a forwarding address was received. As such, I am satisfied that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims, 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 \$3,372.00, I am satisfied from the consistent and undisputed evidence that the Tenant did not pay any rent for November and December 2022, or January 2023. As such, I grant the Landlord a monetary award in the total amount of **\$3,372.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$25.00 for the cost of the NSF fee, based on the consistent and undisputed evidence before me, I am satisfied that the Landlord was permitted to charge this fee. As such, I grant the Landlord a monetary award in the amount of **\$25.00** to remedy this issue.

With respect to the Landlord's claim for compensation in the amount of \$3,100.00 for the cost of hiring the bailiff, I am satisfied from the consistent and undisputed evidence

that an Order of Possession was awarded against the Tenant, and that he did not vacate the rental unit. Thus, the Landlord was forced to employ a bailiff to gain vacant possession of the rental unit back. As such, I grant the Landlord a monetary award in the amount of **\$3,100.00** to rectify this matter.

Regarding the Landlord's claim for compensation in the amount of \$120.00 for the cost to file for the Writ of Possession, I am satisfied from the consistent and undisputed evidence before me that the Landlord paid this fee in order to hire the required bailiff. As such, I grant the Landlord a monetary award in the amount of **\$120.00** to satisfy this claim.

Finally, with respect to the Landlord's claim for compensation in the amount of \$1,301.69 for the cost to clean the rental unit and dispose of refuse, I am satisfied from the consistent and undisputed evidence before me that the Tenant did not leave the rental unit in a reasonable state at the end of the tenancy. As such, I grant the Landlord a monetary award in the total amount of **\$1,301.69** to remedy this issue.

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

November and December 2022, plus January 2023 rent	\$3,372.00
NSF fee	\$25.00
Bailiff cost	\$3,100.00
Filing fee for bailiff	\$120.00
Cleaning and refuse disposal	\$1,301.69
Filing fee	\$100.00
Security deposit	-\$520.00
TOTAL MONETARY AWARD	\$7,498.69

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$7,498.69** 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: August 21, 2023

Residential Tenancy Branch