



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL, FFL

Introduction

On November 4, 2022, the Landlords 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*.

Both Landlords attended the hearing and confirmed that they had permission to serve the Notice of Hearing package to only the Tenant by Substituted Service, pursuant to a Decision dated November 29, 2022. As such, the Style of Cause on the first page of this Decision has been amended to remove the second Respondent on this dispute. The Tenant did not attend at any point during the 72-minute teleconference.

Rule 7.1 of the Rules of Procedure (the “Rules”) 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 2:42 PM. Only the Applicants 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.

At the outset of the hearing, I informed the Landlords 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.

They advised that their Notice of Hearing and evidence package was served to the Tenant by email on December 1, 2022, and they submitted proof of doing so in accordance with the Substituted Service Decision. They confirmed that they did not receive a message back stating that the email was undeliverable, and they stated that they did not receive any response from the Tenant. Based on this undisputed evidence, I am satisfied that the Tenant has been duly served the Landlords' Notice of Hearing and evidence package. As such, I have accepted the Landlords' 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

- Are the Landlords entitled to monetary compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords 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 Landlords advised that the tenancy started on November 1, 2019, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 31, 2022. Rent was established at an amount of \$2,050.00 per month and was due on the first day of each month. A security deposit of \$1,025.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They confirmed that they never conducted a move-in inspection report with the Tenant at the start of the tenancy. As such, the move-out inspection report that they submitted as documentary evidence bears little weight. A copy of this report was submitted as

documentary evidence, regardless. In addition, they stated that the Tenant never provided a forwarding address.

They advised that they were seeking compensation in the amount of **\$406.00 plus tax** because the Tenant did not clean the rental unit or leave it in a re-rentable state at the end of the tenancy. They referenced the pictures of the deficiencies that were submitted as documentary evidence to support this position. As well, they cited an estimate submitted to support the cost of this expense. They stated that they completed additional cleaning themselves because the condition that the Tenant left the rental unit in was so poor; however, they did not claim for this expense.

They then advised that they were seeking compensation in the amount of **\$250.00 plus tax** because the Tenant did not clean the carpet at the end of the tenancy. They stated that they borrowed a carpet cleaning machine from a friend, that they purchased \$50.00 worth of liquids for carpet cleaning, and that they spent 8 hours cleaning the carpets, over two days. They referenced the pictures submitted as documentary evidence to support this position, but they did not provide any receipt for the cost of the liquids that they purchased.

They advised that they were seeking compensation in the amount of **\$1,594.00 plus tax** for a new refrigerator because the Tenant scratched the door to the existing one that was provided at the start of the tenancy, as per the pictures provided. They acknowledged that this appliance is functioning perfectly, but it just does not “look good”. They were unsure of the age of the refrigerator, but suspected that it was approximately seven years old. They referenced the screenshot that was submitted as documentary evidence to support the cost of a new refrigerator.

They advised that they were seeking compensation in the amount of **\$1,294.00 plus tax** for a new stove/oven because the Tenant did not clean it, and damaged at least two of the elements of the stove. They provided conflicting and confusing testimony about how many elements were actually working or not, and it appeared as if it was the ignitor on the element knobs that was not functioning correctly. They claimed that a handyman came in to diagnose the issue, but they did not submit any evidence to substantiate this, nor did they have a report from this person indicating that the Tenant negligently damaged the stove. They estimated the age of the stove/oven as approximately seven years old, and they referenced the pictures submitted of the condition that it was left in.

They advised that they were seeking compensation in the amount of **\$100.00** for having to replace a key fob that was not working because the chipset was damaged by the

Tenant. They testified that they provided two fobs at the start of the tenancy, but one was broken at the end of the tenancy. They indicated that they had a receipt for this cost, but they did not submit it.

They advised that they were seeking compensation in the amount of **\$65.10** because the Tenant damaged a window as per the pictures submitted. They claimed that they purchased the part and fixed the issue themselves. They submitted a copy of the receipt as documentary evidence to support the cost of this part.

They advised that they were seeking compensation in the amount of **\$131.20** because the Tenant appeared to have damaged a hallway light. They initially claimed that they fixed this light and replaced it with the fixture depicted in the screenshot that was submitted as documentary evidence, but then they acknowledged that they had not replaced this fixture yet or purchased the substitute fixture.

They advised that they were seeking compensation in the amount of **\$67.97** because the Tenant caused a stain on the bathroom ceiling; however, they did not submit any documentary evidence of this. They submitted a screenshot of how much this paint would cost, but they have not purchased it yet.

They advised that they were seeking compensation in the amount of **\$600.00** for the cost of a handyman to come in and complete some of the aforementioned work. Despite being provided ample opportunities to explain how many hours each of these jobs would make up for this claim, they were unable to provide justification for a specific number of hours.

Finally, they advised that they were seeking compensation in the amount of **\$2,050.00** for November 2022 rent because they were unable to re-rent the unit due to the condition that the Tenant left it in.

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 Landlords 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 Landlords 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 Landlords must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) 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 Landlords 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 Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords 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 was not completed by the Landlords with the Tenant, I am satisfied that the Landlords did not comply with the requirements of the *Act* in completing this step. As such, I find that the Landlords have extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlords’ claim against the Tenant’s security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not

make a claim against the deposit, and the Landlords 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, given that a forwarding address in writing was never provided by the Tenant, I am satisfied that Section 38 of the *Act* was never initiated and thus, the doubling provisions do not apply to the security deposit in this instance, despite the Landlords extinguishing the right to claim against it.

With respect to the Landlords' 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 Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

With respect to the Landlords' claim for compensation in the amount of \$406.00 plus tax for cleaning of the rental unit, I am satisfied from the consistent and undisputed evidence that the Tenant did not clean adequately or leave the rental unit in a re-rentable state at the end of the tenancy. While there was no documentary evidence submitted to corroborate their claim that they spent this money, I find it reasonable to conclude that this amount of cleaning, whether they did it themselves or paid someone, would be justified given the state the Tenant left the rental unit. As such, I grant the Landlords a monetary award in the total amount of **\$426.30** to satisfy this claim.

Regarding the Landlords' claim for compensation in the amount of \$250.00 plus tax for carpet cleaning, I am satisfied from the consistent and undisputed evidence that the Tenant did not clean the carpet prior to the tenancy ending, and that it was in need of being done. Again, while there was no documentary evidence submitted to support their

claim, I find it reasonable to conclude that this amount for carpet cleaning, whether they did it themselves or paid someone, would be justified given the state the Tenant left the rental unit. As such, I grant the Landlords a monetary award in the total amount of **\$262.50** to remedy this matter.

With respect to the Landlords' claim for compensation in the amount of \$1,594.00 plus tax for a new refrigerator, I am satisfied from the consistent and undisputed evidence that the Tenant scratched the surface of the door of the refrigerator. However, I find it important to note that there is nothing wrong with the functionality of the refrigerator, and this is only an aesthetic loss, where it is also possible that only the door could be changed. As such, I do not accept that the Landlords would be entitled to a brand-new fridge. Moreover, Policy Guideline # 40 indicates that the useful life of a refrigerator is approximately 15 years. Given that this damage does not affect the use of the fridge, and given that this is merely cosmetic damage, I find it appropriate to grant the Landlords a monetary award in the amount of **\$100.00** for the loss in value caused by this damage.

Regarding the Landlord's claim for compensation in the amount of \$1,294.00 plus tax for a new stove/oven, I am satisfied from the consistent and undisputed evidence that the Tenant did not clean the stove/oven. While the Landlords claimed that the Tenant damaged the ignition system on some of the elements, I find there to be no documentary evidence submitted from a qualified repair person corroborating that these issues were caused by the Tenant's negligence and were not simply routine maintenance issues. As such, I do not accept that the Landlords would be entitled to a brand-new stove/oven, and I reject this claim in its entirety.

With respect to the Landlords' claim for compensation in the amount of \$100.00 for the cost to replace a key fob, I am satisfied from the undisputed testimony of the Landlords that two fobs were provided at the start of the tenancy, and that one was broken at the end of the tenancy. While they did not submit any documentary evidence to support this claim, I find it reasonable to conclude that this would be an appropriate amount to rectify this matter. As such, I grant the Landlords a monetary award in the total amount of **\$100.00**.

Regarding the Landlords' claim for compensation in the amount of \$65.10 because the Tenant damaged a window, I am satisfied from the consistent and undisputed evidence that the Tenant was negligent for this damage and that the Landlords repaired this issue. As such, I grant the Landlords a monetary award in the total amount of **\$65.10** to satisfy this claim.

With respect to the Landlords' claim for compensation in the amount of \$131.20 due to a light fixture that the Tenant damaged, I am satisfied from the consistent and undisputed evidence that the Tenant was negligent for this damage. While the Landlords have not repaired this yet, I accept that the screenshot of the light fixture provided is reasonably comparable to the one that was damaged. As such, I grant the Landlords a monetary award in the total amount of **\$131.20** to remedy this matter.

Regarding the Landlords' claim for compensation in the amount of \$67.97 for the cost of paint to fix a stain on the bathroom ceiling, I am satisfied from the consistent and undisputed evidence that the Tenant was negligent for this damage. As well, I am satisfied that this would be a reasonable cost of paint to fix this issue. Consequently, I grant the Landlords a monetary award in the total amount of **\$67.97** to satisfy this debt.

With respect to the Landlords' claim for compensation in the amount of \$600.00 for the cost of a handyman to complete some repairs, I find that the Landlords have provided little persuasive or compelling testimony to support how many hours a contractor would be required, and for what tasks specifically. Based on their testimony, it was clear that this was just a random estimate that they created to account for some tasks that they may or may not have completed. As such, I do not find that they have adequately substantiated this claim. However, I do acknowledge that the Tenant did leave the rental unit in an unacceptable condition, which clearly required some work to be completed to return it to a re-rentable state. As such, I find it appropriate to grant the Landlords a monetary award in the amount of **\$300.00** to rectify this issue.

Finally, regarding the Landlords' claim for compensation in the amount of \$2,050.00 for November 2022 rent, I am satisfied from the consistent and undisputed evidence that the Tenant did not return the rental unit to a re-rentable state and that the Landlords were unable to rent the unit in November 2022 because of it. Consequently, I grant the Landlords a monetary award in the total amount of **\$2,050.00** to remedy this matter.

As the Landlords were partially successful in these claims, I find that the Landlords are 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 Landlords to retain the security deposit in 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 Tenant to the Landlords

Item	Amount
Cleaning	\$426.30
Carpet cleaning	\$262.50
Refrigerator damage	\$100.00
Replacement key fob	\$100.00
Damaged window	\$65.10
Damaged light fixture	\$131.20
Paint	\$67.97
Labour	\$300.00
November 2022 rent	\$2,050.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$1,025.00
Total Monetary Award	\$2,578.07

Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$2,578.07** 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 14, 2023

Residential Tenancy Branch