



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

On November 17, 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; however, the Tenant did not attend the hearing at any point during the 39-minute teleconference. At the outset of the hearing, I informed the Landlord 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 2:09 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 her Notice of Hearing and evidence package was served to the Tenant by email on November 26, 2022, and that she did so based on the Address for Service form signed with the Tenant on July 28, 2022. However, she did not have

permission to serve in this manner via a Substituted Service Decision. She testified that she did not receive an email back indicating that this email message was undeliverable. Based on this solemnly affirmed testimony, despite not having a Substituted Service Decision permitting her to serve this package in this manner, I am satisfied that the Tenant has been duly served this package.

She then stated that she served additional evidence to the Tenant by email on July 12, 2023, and she did not receive an email back indicating that this message was undeliverable either. Based on this solemnly affirmed testimony, I am satisfied that the Tenant has been served the Landlord's additional evidence. As such, I have accepted all of 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 September 1, 2014, and that the tenancy ended on November 6, 2022, by way of an Order of Possession. Rent was established at an amount of \$2,600.00 per month and was due on the first day of each month. A security deposit of \$1,100.00 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 1, 2014, and a move-out inspection report was not completed as the Tenant did not show up on the agreed upon time on November 6, 2022. She testified that he simply left the keys with the concierge that day. As a result, she conducted the move-out inspection without the Tenant. 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 **\$2,467.50** because the Tenant damaged several items in the rental unit and did not repair them. She referenced pictures of this damage, that were submitted as documentary evidence, as well as the invoice for the cost of remedying these issues, to support her claim for compensation.

As well, she advised that she was seeking compensation in the amount of **\$1,260.00** because the Tenant left refuse and debris behind that the Landlord had to remove and dispose of. As well, she testified that the Tenant also did not clean the rental unit prior to giving up vacant possession. She referenced pictures of these deficiencies, that were submitted as documentary evidence, as well as the invoice for the cost of rectifying these issues, to support her claim for compensation.

She then advised that she was seeking compensation in the amount of **\$200.00** for a move-out fee that the strata charges. She cited the receipt submitted as documentary evidence to demonstrate that she paid this fee.

Finally, she advised that she was seeking compensation in the amount of **\$200.00** for a strata bylaw fine that the Tenant incurred during the tenancy. While she has not paid this yet, she testified that she will be required to pay it once her appeal for additional fines levied against her by the strata is granted.

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, I am satisfied that the Tenant did not attend the agreed upon move-out inspection. As such, I am satisfied that the Landlord was permitted to conduct the move-out inspection without the Tenant. As the Landlord completed these reports in accordance with the *Act*, I find that the Landlord has not extinguished the right to claim against the 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 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. Consequently, 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 \$2,467.50 for damage and subsequent repairs to the rental unit, 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 **\$2,467.50** to remedy this matter.

Regarding the Landlord's claim for compensation in the amount of \$1,260.00 because of refuse left by the Tenant and additional cleaning of the rental unit, based on the consistent and undisputed evidence before me, I am satisfied that the Tenant was

responsible for these issues. As such, I grant the Landlord a monetary award in the amount of **\$1,260.00** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$200.00 for a move-out fee charged by the strata, based on the consistent and undisputed evidence before me, I am satisfied that the Tenant was responsible for paying this move-out fee. As such, I grant the Landlord a monetary award in the amount of **\$200.00** to satisfy this debt.

Finally, with respect to the Landlord's claim for compensation in the amount of \$200.00 because of a strata fine that was levied against the Tenant, based on the consistent and undisputed evidence before me, I am satisfied that the Tenant incurred this fine. As such, I grant the Landlord a monetary award in the amount of **\$200.00** 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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these debts.

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

| | |
|---------------------------------|-------------------|
| Damages and repairs | \$2,467.50 |
| Disposal of refuse and cleaning | \$1,260.00 |
| Move-out fee | \$200.00 |
| Strata fine | \$200.00 |
| Filing fee | \$100.00 |
| Security deposit | -\$1,100.00 |
| TOTAL MONETARY AWARD | \$3,127.50 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,127.50** 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 3, 2023

Residential Tenancy Branch