



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL, MNDCT, MNSD, FFT

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On August 4, 2023, 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.

On September 30, 2023, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the Act, seeking a Monetary Order for compensation pursuant to Section 67 of the Act, and seeking to recover the filing fee pursuant to Section 72 of the Act.

These Applications were adjourned as per my Interim Decision dated February 1, 2024.

The Landlord attended the final, reconvened hearing, with D.F. attending later as a witness. The Tenant attended the final, reconvened hearing as well, with D.D. attending later as a witness. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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.

Service of the respective Notice of Hearing and evidence packages was discussed at the original hearing, and there were no issues concerning service. As such, I have accepted all parties' 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 these debts?
- Is the Landlord entitled to recover the filing fee?
- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant 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.

All parties agreed that the tenancy commenced on March 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 1, 2023. Rent was established at an amount of \$1,725.50 per month and was due on the first day of each month. A security deposit of \$850.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

There was a dispute at the original hearing whether a move-in inspection report was conducted with the Tenant; however, it was later determined, as evidenced by the Tenant not signing the move-in inspection report, that one was not done in accordance with the Act. The parties agreed that a move-out inspection report was conducted with the Tenant on July 31, 2023, however. A copy of the move-in and move-out inspection report was submitted as documentary evidence for consideration.

They also agreed that the Tenant provided his forwarding address in writing on the move-out inspection report. As well, they agreed that the Landlord returned \$460.71 to the Tenant, by way of e-transfer, on August 4, 2023, and the amount withheld by the Landlord was done so without the Tenant's written consent.

At the original hearing, the Landlord advised that she was seeking compensation in the amounts of **\$34.29** for replacing weather stripping on a door and for a lightbulb replacement, and **\$75.00** for the labour to do this work. She testified that the weather stripping was installed at the start of the tenancy, but it was missing at the end of the tenancy. She referenced the documentary evidence to support this claim, and she stated that it took a couple of hours to complete these repairs.

The Tenant advised that he did not see if this weather stripping was installed at the start of the tenancy, but he agreed that he should be responsible for the lightbulb.

The Landlord then advised that she was seeking compensation in the amount of **\$280.00** for the cost to clean the rental unit because the Tenant left it in a "disgusting" state that was not suitable for re-rental. She testified that there was a lot of dust at the end of the tenancy, that there was a large accumulation of grease in the kitchen and on walls, that there were coffee stains on the walls, that a lot of pet hair was not vacuumed, that the bathtub was blocked by hair, and that the table outside was covered in leaves. She stated that she spent eight hours of her own time remedying these issues. As well, she referenced the documentary evidence submitted to substantiate this claim.

The Tenant advised that he hired two cleaners, and that it cost him \$400.00; however, he did not have any proof of this payment.

At the final, reconvened hearing, D.F. advised that he had spoken with the Landlord about the condition of the rental unit, that he fixed the weather stripping, and that \$250.00 was paid for it. He also testified that the rental unit was not clean at the end of the tenancy, that there were hairs in the corners of the unit, that the bathtub was clogged, and that the oven and fridge were dirty.

The Tenant was seeking compensation in the amount of **\$250.00** on his Application; however, during the final, reconvened hearing, he stated that he would be withdrawing this claim as it was possible that his pet did this damage. He then advised that he was seeking compensation in the amount of **\$389.29** because the move-out inspection report took two hours, that the Landlord indicated that the rental unit was in a re-

rentable state at the end of the tenancy, and that the Landlord then altered the move-out inspection report after it was completed. He testified that he paid \$400.00 for his own cleaners that his girlfriend hired, but contrary to his testimony at the original hearing, he stated that he received a receipt for this cleaning. It is uncertain why this receipt was not provided as documentary evidence if this was indeed the case. He submitted that there were two cleaners who spent five hours cleaning the rental unit.

D.D. advised that she found these cleaners online, and that the cleaning commenced over five or six days, but she then contradictorily changed that to hours. She testified that \$400.00 was paid for this cleaning in cash, but she did not witness this exchange and she confirmed that there was no receipt given. However, she stated that she did witness them cleaning the rental unit. She stated that she was present at the move-out inspection, and the Landlord did not mention any cleaning issues. She also submitted that the Landlord made edits to the move-out inspection report after it was signed.

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 it is evident that the Landlord did not complete a move-in inspection with the Tenant in accordance with the Act, I am satisfied that the Landlord did not comply with the requirements of the *Regulation*, and as a result, I find that the Landlord has 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.

The consistent and undisputed evidence is that the forwarding address in writing was received on July 31, 2023, and that the Landlord made the Application on August 4, 2023. While the Landlord returned \$460.71 of the Tenant's deposit and made this Application within 15 days of receiving the forwarding address in writing, as the Landlord extinguished the right to claim against the security deposit, but did so anyways, I am satisfied that the Landlord failed to comply with the requirements of the Act with respect to the handling of the security deposit at the end of the tenancy. As the Landlord returned only a portion of the security deposit within the 15 days, I am satisfied that, pursuant to Policy Guideline #17, the security deposit will be doubled pursuant to the following calculation $\$850.00 \times 2 = \$1,700.00 - \$460.71 = \mathbf{\$1,239.29}$.

With respect to the Landlord's and Tenant'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 Landlord/Tenant fail to comply with the Act, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord/Tenant prove the amount of or value of the damage or loss?
- Did the Landlord/Tenant act reasonably to minimize that damage or loss?

In addition, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amounts of \$34.29 for replacing weather stripping and for a lightbulb replacement, and \$75.00 for the labour to complete these issues, I am satisfied from the evidence before me that the Tenant was likely negligent for this damage. As such, I grant the Landlord a monetary award in the amount to **\$109.29** to remedy this matter.

Regarding the Landlord's claim for compensation in the amount of \$280.00 for the cost to clean the rental unit, I note that there is a substantial amount of pictures of the state of the rental unit at the end of the tenancy. I do not find it reasonable to conclude that these deficiencies were created after the move-out inspection. Moreover, I note that both the Tenant and D.D. provided conflicting testimony about how long this alleged cleaning took, and whether or not a receipt was ever provided for it. These inconsistencies in their respective testimony cause me to doubt the reliability and credibility of them both. As such, I find it more likely than not that the Tenant did not clean the rental unit sufficiently upon move out. Consequently, I grant the Landlord a

monetary award in the amount of **\$280.00** to satisfy this debt.

However, as the Landlord has already withheld this total amount of **\$389.29**, the Landlord will not be given a Monetary Order for this amount as she is already in possession of it. She is simply permitted to now retain that amount.

With respect to the Tenant's claim for compensation in the amount of \$250.00, as he withdrew this claim, this is dismissed without leave to reapply. Regarding the Tenant's claim for compensation in the amount of \$389.29, as I have already determined above that the Tenant was negligent for damage and necessary cleaning to the rental unit, this claim is also dismissed without leave to reapply

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

As the Tenant was not successful in his claims, I find that the Tenant is not 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 Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Landlord filing fee	\$100.00
Doubling of remaining security deposit	-\$1,239.29
TOTAL MONETARY AWARD	\$1,139.29

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,139.29** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: March 27, 2024

Residential Tenancy Branch