



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

On October 30, 2018, the Landlord applied 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 these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

K.O. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing package and evidence was served to each Tenant by registered mail on October 31, 2018 and the Tenant acknowledged that she received this package. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing package and evidence.

The Tenant advised that she served her evidence by registered mail and that she served by hand a DVD with some google reviews on January 18, 2019. She stated that she did not confirm if the Landlord could view the contents of the DVD. The Landlord stated that she received the Tenant’s evidence package on January 16, 2019, that she received the DVD and google reviews on January 18, 2019, and that she could review the contents of the DVD. As such, I have accepted this 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?

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 started on March 11, 2017 and ended when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,175.00 per month, due on the first day of each month. A security deposit of \$587.50 was also paid.

All parties agreed that a move-in inspection report was conducted with the Tenants on March 10, 2017.

The Landlord advised that a move-out inspection report was conducted on March 1, 2018 and the deficiencies were outlined. She believes that the building manager organized the move-out inspection report, but she is not sure of the time that this was scheduled for or how it was communicated to the Tenants. A copy of the inspection reports were submitted as documentary evidence.

The Tenant advised that she was never contacted about the move-out inspection report. She stated that they finished moving between 9 and 10 PM on February 28, 2018 and that they put the keys and their forwarding address through the mail slot in the office.

The Landlord confirmed that the building manager advised her that the Tenants' forwarding address was received on March 2, 2018.

She stated that she made an Application to keep this deposit on March 19, 2018 (the relevant file number is listed on the first page of this decision); however, she stated that she forgot to attend that hearing. As the Landlord did not attend the hearing, it was determined in this decision that the Landlord's Application be dismissed with leave to reapply; however, this was not an extension of any applicable limitation period.

The Landlord submitted that they are seeking compensation in the amount of **\$1,245.00**, which is comprised of \$1,175.00 for February 2018 rent that bounced, a \$25.00 late payment fee, a \$25.00 insufficient funds fee, and a \$20.00 parking fee. The tenancy agreement submitted as documentary evidence outlines these costs.

The Tenant did not refute any of these amounts owing.

The Landlord submitted that they are seeking compensation in the amount of **\$400.00** for the cost of cleaning the rental unit as the Tenants did not leave the rental unit in a rentable state. She submitted a copy of the invoice for the work completed and photos of the condition of the rental unit. She advised that the person cleaning the rental unit spent 16 hours at a cost of \$25.00 per hour to bring the rental unit back to a rentable condition.

The Tenant advised that she does not believe these pictures are of her rental unit. She stated that she received an email from the building manager stating that they were preparing to show the rental unit on March 2, 2018 so she is not sure how the rental unit could have been in a unrentable state at the end of the tenancy.

The Landlord advised that the building manager conducted the inspection on March 1, 2018, that the building manager's email confirms that the rental unit was ready for viewing on March 2, 2018, and that she is not certain when the building manager completed the cleaning of the rental unit. However, she stated that the rental unit was re-rented for April 1, 2018.

The Landlord submitted that they are seeking compensation in the amount of **\$300.00** for the cost to remove garbage from the rental unit. She submitted copies of photos of the items left in the rental unit as well as a list of those items. She advised that she did not have a receipt for the disposal costs.

The Tenant stated that she did leave these items behind as she could not remove them herself; however, the Landlord did not take these items to the dump as there was a dumpster at the back of the building where these items were disposed of.

The Landlord submitted that they are seeking compensation in the amount of **\$268.00** for the cost of replacing a closet mirror door that was broken. She submitted a copy of the invoice as documentary evidence to support the cost of this claim.

The Tenant stated that this broken closet was caused by the neighbours next door jumping against the wall. She stated that these neighbours were problematic tenants and caused lots of disturbances. She submitted that this broken closet happened early on in the tenancy and she advised the previous building manager about it, but it was not fixed. She stated that she has no proof that this damage was caused by the neighbours; however, there are numerous police reports documenting the neighbours' actions.

The Landlord confirmed that the neighbours were problematic tenants; however, she speculated that if their behaviour caused this damage, it would be likely that other damage would have occurred as well.

The Landlord submitted that they are seeking compensation in the amount of **\$50.00** for the cost of replacing the locks as the keys were not returned at the end of the tenancy. The Landlord advised that the building manager found the keys on March 2, 2018 but the fob was deactivated on March 1, 2018 so she is not sure how the Tenant could have had access to drop off the keys on March 2, 2018.

The Tenant did not have any submissions with respect to this point.

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 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 Tenants' 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, the Landlord confirmed that she had the Tenants' forwarding address in writing on March 2, 2018 and that they made an Application to keep the deposit on March 19, 2018. However, the Landlord failed to attend that hearing and as a consequence, that Application was dismissed with leave to reapply. As the Landlord's second Application was outside of the timeframe to deal with the deposit pursuant to Section 38 of the *Act*, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenant has established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a Monetary Order in the amount of **\$1,175.00**.

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."

Regarding the Landlord's claim in the amount of \$1,245.00 for cost associated with February 2018 rent, as these amounts are undisputed and unpaid, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **\$1,245.00** to cover these arrears.

With respect to the Landlord's claim of \$400.00 for the cost of cleaning the rental unit, as the Landlord was uncertain when the cleaning occurred, as she did not provide any evidence of communication with the Tenant with respect to coordinating a move-out inspection report pursuant to Section 35 of the *Act*, and as the move-out inspection report does not specifically outline the areas where there were deficiencies, I am not satisfied, on a balance of probabilities, that the Landlord has established this claim. As such, I dismiss this portion of the Landlord's claim in its entirety.

With respect to the Landlord's claim of \$300.00 for the cost of disposing of items left behind in the rental unit, I am satisfied from the undisputed evidence that these items

were left behind by the Tenants. However, as the Landlord has not provided any evidence to substantiate the cost of disposing of these items, I find that the Landlord should be awarded what would be considered a reasonable amount to rectify this issue. As such, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **\$150.00** for this portion of their claim.

Regarding the Landlord's claim in the amount of \$268.00 for the cost of replacing the broken closet door, I do not find it plausible that the neighbouring tenants behaviour or actions could have caused this damage. Consequently, I find it more likely than not that, on a balance of probabilities, the Tenants were responsible for this damage. As such, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **\$268.00** for this portion of their claim.

Finally, with respect to the Landlord's claim in the amount of \$50.00 for the cost of replacing the locks, while there is conflicting testimony with respect to when the keys were returned, the consistent evidence is that the Landlord received the keys back in early March 2018. Regardless, I find it curious that the invoice for the lock replacement is dated February 9, 2017 which is over a year prior to the Tenants vacating the rental unit. As such, I am not satisfied that the Landlord's evidence sufficiently established this claim and as a result, I dismiss this claim in its entirety as well.

As the Landlord was partially successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 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

Arrears associated with February 2018 rent	\$1,245.00
Disposal of items	\$150.00
Replacement of broken closet	\$268.00
Less double the security deposit	-\$1,175.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$588.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$588.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 19, 2019

Residential Tenancy Branch