



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with cross applications filed by the parties. On December 15, 2019, 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 these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 16, 2019, the Tenant made an Application for Dispute Resolution seeking a return of double 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 originally set down for a hearing on May 19, 2020 at 1:30 PM but were subsequently adjourned twice, for reasons set forth in two Interim Decisions. K.H. attended the final reconvened hearing as an agent for the Landlord. The Tenant attended the final reconvened hearing as well. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and 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 monetary compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to monetary 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 Tenant first moved in on May 1, 2015, that the last tenancy agreement started on December 1, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on November 30, 2019. Rent was established at \$3,120.00 per month and was due on the first day of each month. K.H. advised that a security deposit of \$1,150.00 was also paid. The Tenant claimed that a security deposit of \$1,560.00 was paid; however, he could not direct me to any evidence of such. He was also given an opportunity to review his evidence and the Landlord's evidence, but he could not note where this additional amount was allegedly paid. He eventually conceded that the security deposit was likely \$1,150.00.

All parties agreed that a move-in inspection report was conducted with the Tenant on April 30, 2015; however, the Tenant advised that he was not provided with a copy of this report. A copy of this report was submitted as documentary evidence.

K.H. advised that the standard company procedure is that a tenant is provided with a copy of this report at the start of each tenancy. She stated that the Tenant was provided with a copy of this report at the start of the tenancy; however, she did not have proof that this was done. She noted that the Tenant never requested a copy or advised the Landlord at any time during the tenancy that he did not receive this report.

The Tenant advised that he was never provided with a copy of this report at all, and he was told at the move-out inspection that the move-in inspection report could not be found. He stated that he would still have a copy of this move-in inspection report if he was provided with one.

All parties agreed that a move-out inspection report was conducted on November 30, 2019.

The Tenant advised that he provided his forwarding address in writing to the Landlord on November 19, 2019 via a letter and also provided this on the move-out inspection report. K.H acknowledged that this forwarding address in writing was received.

K..H. advised that the Landlord is seeking compensation in the amount of \$2025.00 because the Tenant owed \$1,075.00 for unpaid rent, \$350.00 for cleaning fees, and \$600.00 for junk removal. However, on the Application, the Landlord requested compensation in the amount of \$1,000.00 only. K.H. clarified that the Landlord was actually seeking compensation in the amount of **\$1,000.00** for the cost of cleaning fees and junk removal. As such, this was the amount of compensation that will be considered when rendering this Decision.

She stated that these amounts were noted as estimates on the move-out inspection report as \$350.00 for cleaning and \$600.00 for junk removal, and she referenced an invoice that was submitted as documentary evidence demonstrating that the actual cost incurred for these services totalled \$1,000.00. This was broken down as \$650.00 for junk removal and \$302.38 for cleaning, plus tax.

There was a disagreement on what was actually written on the move-out inspection report regarding amounts owed for damages, and both parties provided conflicting testimony to explain the two different colours of ink used on this report. Witness B.H. attended the June 18, 2020 reconvened hearing, as an agent for the Landlord, to help explain why there was different coloured ink on this report. He indicated that he was in attendance for the move-out inspection, but the Tenant was not prepared to move out yet, so B.H. gave the report to another agent of the Landlord to complete. However, the Tenant had still not moved out, so this other agent made some notes in the meantime. B.H. was given the report back and he was finally able to complete the report at 9 PM.

With respect to the Landlord's claim of compensation in the amount of **\$650.00** plus tax for junk removal, K.H. advised that the Tenant left patio furniture and chairs behind the building outside the garbage bins. This was noted on the move-out inspection report by B.H. She stated that there were pictures to corroborate this, but these were not submitted as documentary evidence.

The Tenant advised that half the building had moved out at the same time and he put his furniture in the garbage bins first, which he claims to have captured on video; however, this was not submitted into evidence. He also stated that he advised the Landlord that random street people were taking property out of the garbage bins. He submitted that these people left furniture strewn across the alley and in the street. He

did not submit any photos of this as he was informed at the end of the tenancy that there were no issues. He also stated that the next tenant asked him to leave some furniture behind.

With respect to the Landlord's claim of compensation in the amount of **\$302.38** plus tax for cleaning, K.H. advised that the Tenant left the rental unit in condition that required cleaning. The deficiencies were noted on the move-out inspection report, and a team of four cleaners was employed to return the rental unit to a re-rentable state.

B.H. confirmed that the rental unit needed cleaning at the end of the tenancy, and he noted this on the move-out inspection report when he conducted the final walk-through with the Tenant.

The Tenant advised that the notes on the move-out inspection report were not on the report when he signed it. He stated that he had people help him clean the rental unit. He submitted that B.H. was satisfied with the cleanliness of the rental unit at the end of the tenancy and that an agent for the Landlord noted that it was "immaculate". As well, the tenant that moved in after him did not mention anything about the state of the unit. He claims to have text messages with B.H. confirming that B.H. was satisfied of the condition of the rental unit; however, B.H. does not recall these texts.

M.R. attended the original hearing and the reconvened hearing on June 18, 2020 as a witness for the Tenant, and she advised that B.H. told the Tenant that the cleanliness of the rental unit was sufficient. She confirmed that the move-out inspection report was not filled out by an agent for the Landlord and that the next tenant moved in right away, with no complaints. She stated that she was one of four people helping the Tenant to clean the rental unit and that it was immaculate.

With respect to the Tenant's Application, he requested that he was seeking claims for compensation in the amount of \$7,760.00. He did not submit a Monetary Order Worksheet, but provided a document entitled Damage Deposit Return Calculations which appeared to outline his requests for compensation. In this document, he listed a number of claims for varying issues, totalling \$8,689.16. Below that was also a further request for compensation for an issue that, on the face of it, has no basis under the *Act*. Regardless, the total compensation on this document was noted as \$14,929.16 and the Tenant advised that at no point did he fill out an Amendment to his original Application to increase the amount of compensation that he was seeking. Furthermore, he stated that this document was a "rough calculation".

K.H. advised that she did not understand what the Tenant was seeking for compensation and could only base her understanding of the Tenant's claims on his original Application.

As the parties were advised during the final reconvened hearing, Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. When reviewing the Tenant's submissions for his Application, I do not find that he has made it abundantly clear to any party that he is certain of the exact amounts he believes are owed by Landlord. The burden is on the Tenant to explain the breaches of the *Act* and then justify the amount of specific compensation he is seeking that is equivalent to the loss that he has suffered. It was clear that it is the Tenant's belief that there are some accounting errors of payments made to the Landlord that contribute to his claims for compensation; however, he was unable to identify in the evidence where these discrepancies were or adequately explain these alleged inconsistencies.

As I am not satisfied that the Tenant outlined his claims precisely, with clarity, I do not find that the Tenant has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. In addition, Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss the Tenant's Application with leave to reapply.

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 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 18 of the *Residential Tenancy Regulations* (the "*Regulations*") states that the Tenant must be provided with a copy of the move-in inspection report within seven days after the inspection is completed.

Section 21 of 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 Landlord or the Tenant has a preponderance of evidence to the contrary.

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.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against the security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports or provide a copy as per the *Regulations*.

Section 17 of the *Regulations* states that the Tenant must be provided with two opportunities to attend an inspection and the Landlord must provide the Tenant with a notice, in the approved form, to attend a second opportunity should the first opportunity not be convenient.

With respect to 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."

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*.

The first issue I will address is whether or not the move-in inspection report was provided to the Tenant. While the Tenant claims to have never received this report, he has provided insufficient evidence to support this allegation. Even though there is conflicting testimony of whether or not this was provided, the evidence I have before me is a copy of this report submitted by the Landlord and testimony from K.H. that the company policy is that the report is provided at the start of tenancies. Furthermore, there is no evidence before me that the Tenant ever requested a copy of this report during the tenancy. As such, based on a balance of probabilities, I find it more likely than not that the Tenant was provided with a copy of the move-in inspection report pursuant to the *Act* and *Regulations*.

Secondly, I must address the validity of the move-out inspection report. I note that the parties had differing accounts of what was noted on the report when the Tenant signed it. I find it important to note that under Section 17 of the *Regulations*, the Landlord is required to give the Tenant a notice of final opportunity to participate in the move-out

inspection if the first opportunity was not convenient. Once this notice is given, if the Tenant does not participate in this second opportunity, the Landlord may simply conduct the inspection in his absence. However, there is no evidence that a notice of final opportunity was given, and in this instance, it appears as if multiple agents for the Landlord went back several times to attempt to conduct a move-out inspection with the Tenant.

I find that this was a contributing factor to the confusion on the different handwriting and different coloured ink on the move-out inspection report, which has led to the difficulty in determining what was actually noted on the report at the time of the move-out inspection. When reviewing the conflicting testimony of the parties and the evidence before me, I find that had the Landlord complied with the *Act* and *Regulations* and conducted a move-out inspection report on a designated time after a notice of final opportunity was given, that this move-out report could be given more evidentiary weight. Based on the circumstances, I find that the Landlord has been negligent, and as a result, I place little weight on the accuracy of what has been documented on the move-out inspection report submitted before me.

However, as I am satisfied that the Landlord completed a move-in and move-out inspection report with the Tenant, I find that the Landlord did not extinguish their 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 undisputed evidence is that the forwarding address in writing was provided to the Landlord on November 30, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on the same day. As the Landlord did not extinguish their right to claim against the deposit, and as the Landlord made an Application to keep the deposit within 15 days of November 30, 2019, I find that the Landlord did comply with the requirements of Section 38. Thus, I find that the doubling provisions do not apply in this instance.

Regarding the Landlord's claim of compensation in the amount of **\$650.00** plus tax for junk removal, 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. Clearly both parties have differing accounts of what transpired here, and while K.H. claimed that this furniture that was left behind was noted on the move-out inspection report, I do not find any indication of this other than where it states "junk removal" on the bottom of the last page of the report. Furthermore, while there was apparently photographic evidence of this debris, the Landlord elected not to submit it for consideration to support this claim. Moreover, on the Landlord's submitted invoice for this claim, it states that "Patio Furniture and Chairs (1 load)" were disposed of. I find that I am doubtful that disposing of these few items would realistically or even reasonably cost \$650.00 plus taxes. Based on all of these factors, I am not satisfied that the Landlord has submitted compelling or persuasive evidence to establish this claim. As such, I dismiss it in its entirety.

With respect to the Landlord's claim of compensation in the amount of \$302.38 plus tax for cleaning, it is appropriate to reiterate that the burden of proof lies on the Applicant to corroborate their claim. There was conflicting testimony with respect to the condition of the rental unit at the end of the tenancy, and little documentary evidence submitted from the Landlord to support this claim. While there was a move-out inspection report, as I have indicated above, I have not found the information in this report to be reliable. As a result, I do not find that the Landlord has provided any substantive evidence to support this claim for cleaning. Consequently, I dismiss it in its entirety.

As the Landlord was not successful in their claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application. As well, the Landlord is Ordered to return the security deposit in the amount of **\$1,150.00** to the Tenant.

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.

Conclusion

Based on my findings above, the Landlord's Application is dismissed without leave to reapply.

The Tenant is provided with a Monetary Order in the amount of **\$1,150.00** 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.

In addition, based on my findings above, the Tenant's Application is dismissed with leave to reapply.

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: July 22, 2020

Residential Tenancy Branch