



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD, MNETC, FFT

Introduction

This hearing dealt with cross-applications filed by the parties. On January 22, 2023, 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 and pet damage 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 January 27, 2023, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 51 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 August 22, 2023, at 1:30 PM and then were subsequently adjourned for reasons set forth in the Interim Decision dated August 23, 2023. These Applications were then set down for a final, reconvened hearing on September 29, 2023, at 9:30 AM.

Both Landlords and both Tenants attended the final, reconvened hearing. 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.

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 a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?
- Are the Tenants entitled to a Monetary Order for a return of the security deposit and pet damage deposit?
- Are the Tenants entitled to a Monetary Order for one month's rent after being served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to a Monetary Order for 12 months' rent after being served the Notice?
- Are the Tenants 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 tenancy started on September 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on January 8, 2023. Rent was established at an amount of \$2,000.00 per month and was due on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlords confirmed that neither a move-in inspection report nor a move-out inspection was conducted with the Tenants. As well, the Tenants confirmed that they never provided their forwarding address in writing to the Landlords until their Notice of Hearing package was served. The Landlords acknowledged that they are still holding these deposits in trust.

As was noted in the Interim Decision, the Landlords' claim for \$2,000.00 was dismissed with leave to reapply. As such, at the original hearing, Landlord E.K. advised that they were seeking compensation in the amount of **\$1,300.00** for 50% of the cost to replace a sofa bed that the Tenants damaged. She testified that the sofa bed was brand new four years ago. She referenced pictures of the condition of this sofa bed at the end of the tenancy. She stated that the sofa bed was not useable at the end of the tenancy, so they disposed of it. She cited the quote of the cost of a replacement sofa bed to support their position.

Tenant K.H.L. advised that they did not want the sofa bed, but the Landlords said they could use it as long as it was returned in the same condition as at the start of the tenancy. He testified that the material "started peeling off" near the beginning of the tenancy, and that this condition slowly degraded during the tenancy. He stated that there were messages with the Landlords about this sofa bed, and he noted that this piece of furniture was not noted in the tenancy agreement as being included.

E.K. advised that "partial furniture" was noted on the tenancy agreement, and that there was no list of what furniture was included as part of this tenancy. She testified that this sofa bed was "not in perfect condition" at the start of the tenancy, and that the Tenants' pet scratched it. She did not recall the Tenants advising that they did not want this sofa bed.

As this addressed the Landlords' claims in their Application, the focus in the final, reconvened hearing turned to the Tenants' claims for compensation after being served the Notice. After some submissions were made with respect to the compensation requirements when this type of Notice is served, it was determined that the Landlords only served page one of this Notice to the Tenants.

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 Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenants 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 Landlords or the Tenants 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 Tenants 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 neither a move-in inspection report nor a move-out inspection report was conducted with the Tenants, I am satisfied that the Landlords failed to comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlords have extinguished the right to claim against the deposits.

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 Tenants' security deposit and pet damage 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 Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that the Landlords made their Application, by way of consent via email service, prior to receiving the Tenants' forwarding address from the Tenants' Notice of Hearing package, I am satisfied that Section 38 of the *Act* was not initiated prior to the Landlords making this Application as the Tenants did not provide their forwarding address in writing. As such, I do not find that the doubling provisions apply to the security deposit and pet damage deposit in this instance.

With respect to the Landlords' 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 Tenants 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?

I also 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 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 Landlords' claims for compensation in the amount of \$1,300.00 for 50% of the cost of replacing the damaged sofa bed, the consistent and undisputed evidence before me is that the Landlords did not complete a move-in inspection report to document the condition of this sofa bed prior to the start of the tenancy. Moreover, K.H.L. advised that this sofa bed was already peeling at the start of the tenancy, and E.K. acknowledged that it was "not in perfect condition" at the start of the tenancy. Without a move-in inspection report completed by the Landlords, I am not satisfied that they have established the condition of the sofa bed at the start of the tenancy. Based on the testimony of the parties, it is more likely than not that there was at least some damage to the sofa bed at the start of the tenancy. As such, I do not find that the Landlords have justified this claim. Consequently, this claim is dismissed in its entirety. As the Landlords' claim has been dismissed, I grant the Tenants a monetary award in the amount of **\$2,000.00**, for a return of their security deposit and pet damage deposit.

As that addresses the Landlords' Application, I will now turn to the Tenants' claims for compensation after being served the Notice. Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The issue I must consider here is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlords failed to serve the entirety of the Notice, as they only served the first page. As such, I find that this was a not a valid Notice, and no claims for compensation can be considered. Consequently, the Tenants' claims for compensation after being served the first page of this Notice are dismissed in their entirety.

As the Landlords were not successful in their Application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their Application.

As the Tenants were not successful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for their Application.

Pursuant to Section 38 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Return of security deposit	\$1,000.00
Return of pet damage deposit	\$1,000.00
TOTAL MONETARY AWARD	\$2,000.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,000.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: October 4, 2023

Residential Tenancy Branch