



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNDC MNSD

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for September 11, 2017. I had allowed the tenants' adjournment application as the tenant HA had to attend with the hospital with a friend.

The adjournment decision dated September 12, 2017 noted the requirements for service of the hearing package and evidence. The landlords acknowledged receipt of all hearing documents, and were ready to proceed with this matter. The tenants also acknowledged receipt of the landlord's evidence for this hearing, and were ready to proceed.

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for Unpaid Rent and Utilities?

Are the landlords entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on January 6, 2017 with monthly rent set at \$1,800.00. The landlords collected, and still hold, a security deposit the amount of \$900.00. The tenants moved out on April 18, 2017 after being served with the landlord's Order of Possession, and the tenants' forwarding address was provided to the landlords at the September 11, 2017 hearing.

The landlords submitted the following list of items for their monetary claim:

Item	Amount
Unpaid Rent for March and April 2017	\$3,600.00
May 2017 Rent	1,800.00
NSF Fees	14.00
Painting	250.00
Professional Cleaning	200.00
New Mattress	400.00
Total Monetary Order Requested	\$6,264.00

The landlords testified that the tenants owed rent for March and April 2017. The tenants did not dispute this, stating that they had withheld the rent due to issues with the heating system during the tenancy. The landlords submitted a claim for \$14.00 in bank fees incurred due to the unsuccessful cashing of the two cheques.

After the tenants moved out on April 18, 2017, the landlords mitigated their losses by advertising immediately, and found a new tenant for June 1, 2017 for \$1,780.00 per month. The landlords submitted a claim for the loss rental income for May 2018.

The landlords testified that the tenants failed to properly clean the unit before vacating, including not repairing the scratched walls, and soiling the brand new mattress. The tenants admit that their daughter had left feces on the mattress, but they had attempted to clean the mattress the best they could, and the act was unintentional. The tenants admitted that they were angry and the "last thing I want to do is take care of the place".

Analysis

I considered the testimony of both parties, and I find that it was undisputed that the tenants withheld rent. Section 26(1) of the *Act* states that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

In this case, the tenants did not have permission from the landlord nor an Arbitrator to withhold rent for the issues with the heating system. Accordingly, I find the landlords are entitled to a monetary order for the \$3,600.00 withheld by the tenants, as well as the associated \$14.00 in bank fees.

The landlords provided undisputed evidence at this hearing that this 1 year tenancy had ended early pursuant to a 10 Day Notice for Unpaid Rent. As a result of this tenancy ending before the end of the fixed term, the landlords had to find a new tenant. The landlords testified in the hearing that they had mitigated their losses by advertising the unit immediately, and lost 1 month's rent due to the early end of this tenancy. I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for May 2017, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$1,800.00 in satisfaction of the lost rental income due to the tenants' failure to comply with section 26 of the *Act*, which resulted in the early end of this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenants had caused the landlords a loss, and the amount of that loss.

The landlords applied for compensation in the amount of \$400.00 for a new mattress, which the tenants did not dispute that they had soiled. The landlord did not submit any receipts to support this monetary claim. As the landlords failed to support the value of this loss with receipts or invoices, I find that the landlords are entitled to nominal compensation in the amount of \$200.00 for this damage.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlords provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlords supported their claims with photos. Accordingly, I find the landlords are entitled to compensation for these losses. I issue a monetary award of \$200.00 for the professional cleaning and \$250.00 for the painting.

The landlords continue to hold the tenants' security deposit of \$900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$900.00 in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I allow the landlords to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$5,164.00 in the landlords' favour under the following terms which allows the landlords to retain the security deposit in satisfaction of the monetary claim for losses, plus recover the \$100.00 filing fee for this application.

Item	Amount
Unpaid Rent for March and April 2017	\$3,600.00
May 2017 Rent	1,800.00
NSF Fees	14.00

Painting	250.00
Professional Cleaning	200.00
New Mattress	200.00
Less Security Deposit	-900.00
Total Monetary Order	\$5,164.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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: January 18, 2018

Residential Tenancy Branch