



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This is an application by the landlords under the Residential Tenancy Act (the *Act*) for the following:

- A Monetary Order for outstanding rent pursuant to Section 67 of the *Act*;
- A Monetary Order for compensation for damage or loss pursuant to Section 67 of the *Act*;
- Authorization to retain the Security Deposit pursuant to Section 72 of the *Act*; and
- Reimbursement of the filing fee pursuant to Section 72 of the *Act*.

Both parties appeared at the hearing. Each party submitted documents and each acknowledged receipt of the other's materials. I find the respondent was served with the application for dispute resolution and evidentiary materials in accordance with the *Act*.

Issues to be Decided

Are the landlords entitled to:

- A Monetary Order for outstanding rent pursuant to Section 67 of the *Act*?
- A Monetary Order for compensation for damage or loss pursuant to Section 67 of the *Act*?
- Authorization to retain the Security Deposit pursuant to Section 72 of the *Act*?
- Reimbursement of the filing fee pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agree they had a residential tenancy agreement starting on September 15, 2017 for rent of \$2,300.00 a month payable on the first of the month. The tenancy ended on April 30, 2018 when the tenant vacated the premises. A copy of the agreement was submitted as evidence.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$1,150.00 which is still held by the landlord.

At the outset of the hearing, the tenant agreed he owes the landlords \$2,300.00 for rent for April 2017 and \$136.66 for utilities for a total of \$2,436.66. He also agreed the landlords may retain the security deposit of \$1,150.00 leaving a balance owing the landlords of \$1,286.66, as follows:

April 2017 outstanding rent	\$2,300.00
Outstanding utilities	\$136.66
Less security deposit	(\$1,150.00)
Monetary Order agreed to by Tenant	\$1,286.66

The tenant claims the difficulties between the parties were exacerbated by the landlords living in a different geographical area from the rental premises. The tenant claims the landlords responded either slowly or not at all to his various concerns.

For example, the tenant informed the landlords during the tenancy that another occupant of the building had assaulted him, was dealing drugs, was under police surveillance and was stealing his mail. The landlords testified they knew of the situation and eventually evicted the other occupant.

Despite knowing the tenant believed his mail was being stolen, the landlords continued to mail or post legal notices to the door (or had process servers do so). As a result, the tenant claims he did not know about the landlord's RTB proceedings for orders for outstanding rent and possession.

The landlords claim \$1,494.52 for the following expenses relating to damage to the premises:

April 27, 2018	Home Depot - Paint	101.33
April 18, 2018	Home Depot – Front door blind replacement	\$126.84

April 18, 2018	Home Depot - hardware	\$73.26
April 18, 2018	Home Depot - lightbulbs	\$48.36
April 18, 2018	Home Depot – lightbulbs and miscellaneous items	\$24.73
May 10, 2018	Cleaning for 22.5 hours at \$50.00 an hour to the landlords' company, New Beginnings, performed by landlords	\$1,120.00
	Total damages claimed by landlords	\$1,494.52

The tenant submitted text messages and testimony in support of his claim he is not responsible for any of these items. The tenant's response to the landlords' above claim is summarized as follows:

- None of the repairs described were the tenant's responsibility or, alternatively, the expenses are inflated;
- The landlords lived in another geographical area and did not respond promptly or at all to his requests for repairs as a result of which the tenant or his father repaired some items themselves;
- Some of the claims relate to fixing items which were in a less than optimal condition at the start of the tenancy;
- The April 18, 2018 invoice from Home Depot for \$126.84 includes a \$95.00 drill, (a tool) for which the tenant is not responsible;
- The April 27, 2018 invoice to Home Depot only lists \$48.97 for paint, not \$101.33 as claimed, the balance being other items;
- Many of the lightbulbs did not work throughout the tenancy and the replacement costs are not his responsibility; and
- Many or all the items for which the landlords claim repairs costs did not function properly for various periods, or at all, during the tenancy.

The tenant submitted photographs in evidence showing the premises were clean and in good condition when he vacated. He testified he sent the landlords the pictures by email. The landlords deny receipt.

The parties agree the tenant scheduled an inspection upon move out but the landlords did not attend. They conducted their own inspection after the tenant vacated.

In addition, the landlords claim the following expenses with respect to the tenancy:

Travel costs	\$1,152.97
Process Server	\$171.45

Writ of possession	\$120.00
Filing fees for two RTB applications	\$200.00
Total Expenses Claimed	\$1,644.42

The tenant claims he is not responsible for any of these expenses. He testified the applicants were absentee landlords who did not attend to their obligations as landlords. Instead of communicating with him in a forthright and reliable manner, they choose to mail or post documents, knowing he was unlikely to receive them, instead of calling, texting or emailing. The tenant testified many if not all the landlords' expenses could have been avoided altogether.

Analysis

Each of the parties submitted many documents in evidence and provided considerable, often conflicting, evidence. I only refer to the testimony and evidence relevant to my findings.

Rent and Utilities

The parties agree the tenant owes the landlords \$1,286.66 for outstanding rent and utilities. The landlords are granted a Monetary Order in this amount.

Damages to Premises

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount of damage or loss and order a party to pay compensation to the other party.

The party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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 established, the claimant must then provide evidence to verify the monetary amount of the loss or damage.

In this case, the onus is on the landlords to prove their entitlement to a monetary award.

Section 33 of the *Act* states a tenant is not required to make repairs for reasonable wear and tear. When a tenant vacates a rental unit, Section 37 provides the tenant must leave the rental unit reasonably clean. I prefer and accept the tenant's evidence the

premises were reasonably clean when he left as supported by his submitted photographs.

I have considered the testimony of both parties and reviewed the invoices provided by the landlords in support of their claim for repairs for damages. I find the landlord's invoices include items for which the tenant should not be responsible (such as a tool). I also find the expenses for cleaning (paid to the landlords' company) to be inflated in both time and hourly rate. The contradictions in the landlords' evidence has caused me to question the landlords' claims for damages and expenses.

The landlords claim the inspection report they did in the absence of the tenant is proof of the damage. However, I find failure of the landlords to attend for an inspection scheduled by the tenant to cast doubt on the reliability of their report which may be self-serving. I find the landlords have not established any damage was caused by the tenant.

After reviewing the considerable conflicting evidence, I prefer and accept the tenant's testimony the repairs for damages involved pre-existing damage or were unnecessary.

I therefore do not make a monetary award for the landlords under this heading.

Other Expenses

Section 67 of the *Act* provides the Arbitrator with authority to determine compensation under the *Act*. A landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

I understand the landlords' frustration with the administrative expenses associated with this tenancy. However, I find it is not the tenant's responsibility in this case to reimburse the landlord for the claimed expenses associated with the landlord's decision to live elsewhere. I also find these expenses were not reasonably incurred considering the landlords' knowledge the tenant's mail was being stolen. I conclude these expenses were avoidable by a landlord acting reasonably.

I therefore find the landlords are not entitled to their claimed expenses under this heading.

As the landlords are partly successful in their application, I grant partial reimbursement of the filing fee in the amount of \$50.00.

In summary, I grant the landlords a Monetary Order for the following:

Rent and utilities less the security deposit (as agreed by the tenant)	\$1,286.66
Reimbursement of the filing fee (partial)	\$50.00
Total Monetary Order	\$1,336.66

Conclusion

I grant a Monetary Order to the Landlords in the amount of **\$1,336.66**. This order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) to be 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: June 18, 2018

Residential Tenancy Branch