



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, MNDL, FFL

Introduction

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

- a Monetary Order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this teleconference hearing, which lasted approximately 10 minutes. The line remained open throughout the hearing. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the landlord's application for dispute resolution dated November 26, 2017 on each of the tenants by registered mail sent to a forwarding address provided by the tenants on the condition inspection report of April 3, 2017. The landlord testified that out of an abundance of caution they initially sent the materials on December 3, 2017 and then a second time on January 6, 2018. The landlord provided the Canada Post tracking numbers for the registered mail sent on both occasions. .

Based on the undisputed evidence of the landlord I find that the tenants were each deemed served with the application for dispute resolution and evidence in accordance with sections 88, 89 and 90 of the Act on December 8, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This fixed term tenancy began in May, 2016 and was scheduled to end on April 30, 2017. The monthly rent was \$1,810.00 payable on the first of each month. A security deposit of \$870.00 was collected at the start of the tenancy and is still held by the landlord. A condition inspection report was prepared by the parties at both the start and end of the tenancy.

The landlord said that they advised the tenant that the tenancy would not be renewed and the tenancy would end on April 30, 2017 via a letter dated February 22, 2017. The tenant gave notice to the landlord by a letter dated March 20, 2017 that they would be vacating the rental unit as of April 1, 2017. The tenant failed to pay rent for the month of April. The landlord seeks the amount of \$1,810.00 for the rent for the month of April.

The landlord submits that the tenants left the rental unit in a state of disrepair necessitating considerable repairs, cleaning and replacement of fixtures. The landlord submitted into written evidence photographs and detailed explanation of the repairs that were made after the tenancy ended. The landlord submitted a copy of the condition inspection report as evidence of the condition of the rental unit at the start of the tenancy. The landlord claims the amount of \$1,796.09 for the cost of repairs and cleaning.

The landlord testified that due to the extensive repairs and cleaning that was required the rental unit could not be used for an extra month. The landlord said that they were able to find a new tenant to occupy the rental unit beginning August 1, 2017 at a rate of \$2,750.00. The landlord said that were it not for the repairs required they could have allowed a tenant to occupy the unit sooner and are claiming the amount of \$2,750.00 for lost rent.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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/loss, and that it stemmed directly from a violation of the agreement or a contravention 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the undisputed evidence of the landlord that the tenant gave notice on March 20, 2017 that they would vacate the rental unit April 1, 2017. While the tenant makes reference to a 2 Month Notice that was issued, no Notice to End Tenancy was submitted into evidence nor did the landlord provide evidence that there was a 2 Month Notice issued.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,810.00 for the month of April, 2017. I accept the evidence that the tenant failed to make any payment. I therefore find that the landlord is entitled to a monetary award in the amount of \$1,810.00.

I accept the undisputed evidence of the landlord that there were repairs, cleaning and work required on the rental unit. I accept the landlord's evidence of the cost of the work as \$1,796.09. Accordingly, I find that the landlord is entitled to a monetary award in that amount.

I find that there is insufficient evidence in support of the landlord's claim for lost rent of \$2,750.00. While I accept the landlord's evidence that work was required on the rental unit I find there is insufficient evidence to show that the scope of the work was such that it took a full four months to complete. Furthermore, I find there is insufficient evidence to show that if not for the tenants' actions the rental unit could have been rented out a month earlier at the rate of \$2,750.00. I dismiss this portion of the landlord's application.

As the landlord's application was successful they are entitled to recover the \$100.00 filing fee for this application.

Offset In accordance with sections 38 and the offsetting provisions of 72 of the Act, I allow the landlord to retain the tenants' \$500.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

incurred a smoking fine and fire inspection fee of \$200.00 and \$71.14 respectively. I accept the evidence that the monthly rent is \$1,750.00. I find that the tenant first gave notice on September 22, 2017 of their intention to end the tenancy and pursuant to sections 45(2)(a) and 26 were obligated to pay rent in the amount of \$1,750.00 on

October 1, 2017 but failed to do so. I therefore find that the landlord is entitled to a monetary award in the amount of \$2,021.14.

As the landlord's application was successful the landlord is also entitled to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$870.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,836.09 under the following terms, which allows the landlord to recover unpaid rent, cost of repairs and the filing fee for their application:

Item	Amount
Unpaid Rent April 2017	\$1,810.00
Repair Costs	\$1,796.09
Filing Fees	\$100.00
Less Security Deposit	-\$870.00
Total Monetary Order	\$2,836.09

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: July 10, 2018

Residential Tenancy Branch