



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on February 4, 2018 she forwarded the landlord's application for dispute resolution via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on February 9, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and/or utilities?

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the landlord, the tenancy began on April 30, 2014 on a fixed term until April 30, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenant did not remit a security deposit at the start of the tenancy. The tenant vacated the rental unit on February 7, 2016.

In the landlord's application, the landlord seeks compensation in the amount of \$7,251.25, including the following;

Rent	\$3,600.00
Utilities	\$1,199.35
Interest	\$2,352.00
Filing fee	\$100.00
Total Monetary Claim	\$7,251.35

Upon review of the landlord's claim, I note the above does not equate to \$7,251.25, but rather totals \$7,251.35. In accordance with section 64(3) of the Act, I amend the landlord's application to reflect the amount claimed to \$7,251.35.

The landlord seeks unpaid rent from December 2015 to February 2016 in the amount of \$3,600.00. The landlord claims the tenant paid a total of \$1,200.00 in rent for the above three months.

The landlord seeks outstanding utilities in the amount of \$1,199.35. The landlord testified that the tenant failed to pay the utility arrears prior to vacating the rental unit. The landlord did not submit a copy of the written tenancy agreement or copies of the utility bills. The landlord seeks repayment of interest charged to her credit card in the amount of \$2,352.00. The landlord did not submit copies of her credit card bill.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,600.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from December 2017 to February 2018. Therefore, I find that the landlord is entitled to \$3,600.00 in rent ($\$1,600.00 \times 3 = \$4,800.00 - \$1,200.00$).

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In the absence of a written tenancy agreement or copies of the utility bills, I find the landlord has failed to establish an entitlement to the recovery of utilities. For this reason, I dismiss the landlord's monetary claim for utilities and interest in the amount of \$3,551.35 ($\$1,199.35 + \$2,352.00$) without leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to half the filing fee in the amount of \$50.00, for a total award of \$3,650.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,650.00 for the following items:

Rent	\$3,600.00
Filing fee	\$50.00
Total Monetary Claim	\$3,650.00

I dismiss the landlord's application for a monetary order for utilities and interest, without 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: September 13, 2018

Residential Tenancy Branch