



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRLS, MNDCL, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order of possession based on a undisputed 1 Month Notice to End Tenancy for Cause dated July 8, 2018 ("1 Month Notice"), for a monetary order of \$1,629.83 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord ES ("landlord") and a support person for the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenants each with their own registered mail package ("package") on September 6, 2018. Two registered mail tracking numbers were submitted in evidence which have been included on the cover page of this decision for ease of reference as "1" and "2". The landlord testified that both packages were mailed to the forwarding address provided by the tenants on August 27, 2018 and according to the online registered mail tracking website, both packages were marked as unclaimed and returned to sender. Section 90 of the Act, states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find both tenants were deemed served as of September 11, 2018 which is five days after the packages were mailed on September 6, 2018. As a result, the hearing continued without the

tenants present and I consider this matter to be unopposed and undisputed by the tenants accordingly.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen with the tenants' security deposit and pet damage deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A month to month tenancy began on June 1, 2018. Monthly rent is listed as \$1,050.00 per month and is due on the first day of each month. The landlord stated that the tenants paid a security deposit of \$550.00 and a pet damage deposit of \$250.00 at the start of the tenancy which the landlords continue to hold.

The landlords' monetary claim for \$1,629.83 is comprised as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|---|-------------------|
| 1. Loss of wages and lock for breaker panel due to tenants turning off power to landlords' portion of home (lock \$9.83 and loss of wages \$570.00) | \$579.83 |
| 2. Loss of September 2018 rent | \$1,050.00 |
| TOTAL | \$1,629.83 |

Regarding item 1, the landlord was advised that the loss of wages portion of \$570.00 was being dismissed as this was a residential tenancy and there is no remedy for lost wages under the *Act* as a result. Therefore, I only considered the \$9.83 portion of item 1 which the landlord testified was related to a cost of the landlord installing a lock on the breaker panel door which the landlord stated was being opened by the tenants for the sole purpose of turning off the breaker/power to the landlords' portion of the home.

Regarding item 2, the landlord testified that due to the condition that the tenants left the rental unit in after vacating the rental unit on August 31, 2018, the landlords suffered a loss of rent for the month of September 2018 in the amount of \$1,050.00. The landlord described damage to the rental unit including two holes in the wall behind the main entrance, ripped drywall paper in the living room, and that the tenants tampered both with the shower drain and also removed a cover and removed insulation that had to be repaired by the landlords.

Analysis

Based on the undisputed documentary evidence of the landlords and undisputed testimony of the landlord at the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants.

Item 1 – As mentioned above, the landlord was advised that the loss of wages portion of \$570.00 was being dismissed as this was a residential tenancy and there is no remedy for lost wages under the *Act* as a result. I find the landlords have met the burden of proof for the \$9.83 portion of item 1 which the landlord testified was related to a cost of the landlord installing a lock on the breaker panel door. I accept the landlord's undisputed testimony that the tenants were deliberately turning off the landlord's power by opening up the circuit break panel without permission of the landlords. Therefore, I grant the landlord's the amount of **\$9.83** for the cost of the lock which I find to be reasonable.

Item 2 – I accept the landlord's undisputed testimony that the tenants left the rental unit in a dirty and damaged condition that resulted in the landlords being unable to re-rent the rental unit for the month of September 2018. Therefore, I find the tenants breached section 37 of the *Act* which requires the tenants to leave the rental unit in reasonably clean condition and without damaging the rental unit beyond reasonable wear and tear. I accept the landlord's evidence that the tenant left two holes in the wall behind the main entrance, ripped drywall paper in the living room, and that the tenants tampered both with the shower drain and also removed a cover and removed insulation that had to be repaired by the landlords. Therefore, I grant the landlords **\$1,050.00** for loss of September 2018 rent.

Given that the landlords' claim has merit, I grant the landlords the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find the landlord has established as total monetary claim of **\$1,159.83** comprised of \$9.83 for item 1, \$1,050.00 for item 2 plus the filing fee of \$100.00.

As the landlords continue to hold a security deposit of \$550.00 and a pet damage deposit of \$250.00 for a total in combined deposits in the amount of \$800.00 which have accrued \$0.00 in interest. I authorize the landlords to retain the tenants' full \$550.00 security deposit and full \$250.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlords' monetary claim. Based on the above, I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlords in the amount of **\$359.83**.

Conclusion

The landlords' application is successful.

The landlords have established a total monetary claim of \$1,159.83 and have been authorized to retain the tenants' full \$550.00 security deposit and full \$250.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlords' monetary claim. In addition, the landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlords in the amount of \$359.83. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 29, 2018

Residential Tenancy Branch