



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

On June 19, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not attend the hearing. The Landlord provided a solemn affirmation.

The Landlord submitted a decision of her Application for Substituted Service (the file number is on the first page of this decision) which permitted her to serve the Tenants the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of the substituted service decision, to the Tenants’ email addresses listed in the decision. Furthermore, as per the decision, the Landlord provided evidence that she served these documents to the Tenants’ email addresses on June 23, 2018 and she provided confirmation that one of the Tenants received and opened the email on June 23, 2018. As I am satisfied that the appropriate documents were served to the Tenants as per the Substituted Service decision, I am satisfied that the Tenants were served appropriately and that the hearing could proceed.

The Landlord was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?

- Is the Landlord entitled to a Monetary Order for garbage disposal?
- Is the Landlord entitled to a Monetary Order for stolen items, lock replacement, refuse removal, and cleaning?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on February 1, 2018 and that the Tenants abandoned the rental unit on April 20, 2018. Rent was established at \$2,000.00 per month, due on the 31st day of each month. A security deposit of \$1,000.00 was also paid.

The Landlord advised that she had been previously renting the unit to the Tenants but sold the rental unit to a developer on January 31, 2018. She stated that she had an agreement with the developer that she would rent the unit back as the tenant and then re-rent the unit back to the Tenants, effectively becoming their Landlord and making them sub-tenants to the developer. She stated that she had an agreement with the developer that the tenancy would be for a fixed length of time of six months and that she would not be allowed to re-rent to other sub-tenants should the current Tenants vacate. She advised that the Tenants did not pay April 2018 rent and abandoned the rental unit on April 20, 2018. As she was not allowed by the developer to re-rent the rental unit, she suffered a rental loss and is seeking compensation for May, June, and July 2018 rent as well for a total of **\$8,000.00**.

She stated that the Tenants left a considerable amount of damage and the developer sought \$3,700.00 from her to rectify these issues; however, she could not afford to pay this, so she negotiated with them to return the property to them early if they did not pursue the compensation from her. She advised that she signed a mutual agreement to end her tenancy with the developer on July 4, 2018.

The Landlord is seeking **\$318.97** for the cost of disposing of refuse that the Tenants left in the rental unit and she submitted a receipt and photographic evidence to corroborate her claims.

She is also seeking **\$300.00** for three sets of curtains and rods and **\$200.00** for a TV mount that was stolen. These were her personal items and she would have taken these

at the end of her tenancy. As well, she is seeking **\$50.00** for a stolen showerhead and **\$25.00** for a stolen toilet seat.

S.H. is seeking **\$25.75** for the cost of replacing the locks on the door as she was fearful for her safety and she believed that the Tenants may return. In addition, she is seeking **\$1,600.00** for 16 hours of time that she spent on May 23 and 24 removing junk and time spent at the rental unit, and **\$1,600.00** for 16 hours of time that she spent in June cleaning the rental unit.

She also sought miscellaneous compensation and was advised during the hearing that there were no provisions in the *Act* to cover those types of expenses. As such, those claims were dismissed.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

The first issue I will address is with respect to the Landlord's claim for lost rent. There is no dispute that the parties entered into a fixed term tenancy agreement from February 1, 2018 ending July 31, 2018, yet the tenancy effectively ended when the rental unit was abandoned by the Tenants on April 20, 2018. Sections 44 and 45 of the *Act* set out how tenancies end. It also specifies that the Tenants must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

There is no provision in the *Act* which allows the Tenants to end a tenancy in the manner that they did. As such, I am not satisfied that the Tenants ended the Tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. Furthermore, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to

the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As the Tenants did not pay April rent and as I am satisfied that the Tenants did not end the tenancy in accordance with the *Act*, I find that the Tenants are responsible for April and May's rent. However, while the Landlord claims that there was an agreement with the developer that the rental unit could not be re-rented, there is no provision in the *Act* which allows for such a prohibition. As there is no evidence before me that the Landlord attempted to mitigate her losses by even advertising for short-term rentals, I am not satisfied that she attempted to mitigate her loss and that she would be entitled to June rent. Furthermore, as the evidence before me is that she came to a mutual agreement to end the tenancy with the developer in July, I am also not satisfied that she would be entitled to July rent. Consequently, based on the evidence before me, I am satisfied that the Landlord is entitled to compensation for lost rent for April and May 2018, totaling **\$4,000.00**.

With respect to the Landlord's claim for the cost of disposing of refuse that the Tenants left in the rental unit, I am satisfied by the evidentiary submissions that the Landlord has substantiated that she suffered a loss and is entitled to a monetary order in the amount of **\$318.97**.

With respect to the Landlord's claim for the cost of replacement of stolen items, she has not provided any receipts for any of these items or corroborated the actual value of these items. However, the undisputed evidence is that these items were stolen at the end of tenancy. As such, I am satisfied by the undisputed evidence that the Landlord has substantiated that she suffered some loss. Therefore, I find that she is entitled to a nominal monetary order in the amount of **\$287.50**.

With respect to the Landlord's claim for the cost of changing the locks, I am satisfied that this nominal amount was justified and necessary. As such, I grant the Landlord a monetary award in the amount of **\$25.75** for the cost of replacing the locks.

With respect to the Landlord's claim for compensation for her time to remove junk and clean the rental unit, the undisputed evidence before me is that she spent 32 hours of her own time to rectify these issues. However, I am not satisfied that the hourly amount charged for this to be realistic. I find a more reasonable hourly amount for these types of services to be \$35.00 per hour. As such, I grant the Landlord a monetary award in the amount of **\$1,120.00** for the cost of her time to dispose of refuse and clean the rental unit.

As S.H. was successful in her claims, I find that the Landlord is entitled to the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

April 2018 rent	\$2,000.00
May 2018 rent	\$2,000.00
Refuse removal	\$318.97
Compensation for stolen items	\$287.50
Lock replacement	\$25.75
Refuse removal and cleaning	\$1,120.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,000.00
TOTAL MONETARY AWARD	\$4,852.22

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$4,852.22** in the above terms, and 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: November 5, 2018

Residential Tenancy Branch