



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSD, FFT

Introduction

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

- a monetary order for unpaid utilities pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenants' cross application for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants and landlord BR attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord BR confirmed he had authority to speak on behalf of landlord SY, who was not present.

The landlord confirmed receipt of the tenants' application for dispute resolution and one subsequent evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and evidence.

Preliminary Issue – Landlord's Evidence and Amendment

The tenants confirmed receipt of the landlords' application for dispute resolution and two subsequent evidence packages. The tenants testified that they only received the second evidence package two days prior to the hearing and this package contained a monetary order worksheet which showed an increase in the landlords' claim. The tenants confirmed that they did not receive a completed amendment form from the

landlords. As the tenants did not raise any issues regarding service of the application or first evidence package, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they had increased their monetary application from \$804.00 to \$935.89 to account for an additional utility charge that became apparent after they filed their original application for dispute resolution. The landlord testified that this “amendment” was included in the package the tenants received two days prior to the hearing.

Pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution Form (“amendment form”) and filing the completed amendment form with supporting evidence to the Residential Tenancy Branch. Under the Rules of Procedure, the landlords were obligated to ensure the tenants and Residential Tenancy Branch received the landlords’ evidence and completed amendment form not less than 14 days before the hearing. The evidence package including the increased monetary order worksheet was received just three days prior to the hearing. For this reason, I have not relied on the landlords’ second evidence package to form any part of my decision. The landlords’ monetary claim remains at \$804.00 as stated in their original application.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid utilities?

Are the landlords authorized to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested? If not, are the tenants authorized to obtain a return of all or a portion of the security deposit?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2017 on a fixed term until April 30, 2018 at which time it continued on a month-to-month basis. Rent in the amount of \$2,600.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,300.00 at the start of the tenancy, which the landlords still retain in trust. The parties agreed that

move-in and move-out inspection reports were completed and copies given to the tenants. Pursuant to a 2 Month Notice, the tenants vacated the unit on July 30, 2018 and provided their forwarding address at this time.

The parties agreed that from December 2017 to June 2018 the tenants incurred an \$801.69 charge for utilities. The parties agreed that sometime during the tenancy, the dryer stopped working and as a result the used a laundromat with the agreement the landlords would reimburse the tenants upon submission of an invoice.

The parties agreed that the tenants submitted the invoice to the landlords and deducted this invoiced laundry amount of \$504.00 from the outstanding utility debt of \$801.69. In total the tenants issued a cheque in the amount of \$297.69 to cover the remaining outstanding utilities. The landlord received and cashed the cheque.

Landlords' Claim

The landlords seek compensation in the amount of \$804.00, including the following;

Item	Amount
Internet Service x 15 Months	\$300.00
Utilities	\$504.00
Total Claim	\$804.00

It is the landlords' position that the tenants were responsible for 30% of the monthly internet fee and therefore seek to recover \$20.00 for each month of the tenancy in the total amount of \$300.00. The landlords testified that although they had an agreement to pay for the laundry invoice, the invoice submitted was unreasonable. The landlords claimed they did not authorize the tenants to deduct the laundry invoice from the utilities and therefore seek to recover the unpaid utilities in the amount of \$504.00.

In response, the tenants' claim the landlords gave them the wireless password upon moving in and verbally told them internet was included in the rent. The tenants testified that the landlords agreed to pay for laundry costs; they did not specify what laundromat to use or specify a maximum allowable amount. The tenants testified that they chose this particular laundromat on the basis that they use hypo allergic soap, something they always use at home.

Tenants' Claim

The tenants seek the return of their damage deposit doubled and recovery of the \$100.00 filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the documentary evidence and testimony of the parties I am satisfied that internet was included in rent. Although the tenancy agreement does not specify this, I am persuaded by the details of the addendum. Specifically, the addendum specifies the tenants are responsible for 30% of the electricity and gas but makes no mention of internet service. Further, I find the tenants' undisputed testimony that the landlord gave them the wireless password at the start of tenancy suggests that internet was included. For these reasons, I dismiss this portion of the landlords' claim.

Upon review of the documentary evidence I find the landlords did not grant consent to the tenants to deduct the laundry costs from the outstanding utilities. For this reason I find the landlords are entitled to \$504.00 in unpaid utilities. The tenants are however, at liberty to apply for a monetary order to recover laundry costs.

Under section 38 of the *Act*, the landlord is required to return the security deposit or file an application to retain it within 15 days of the later of the two of the tenancy ending or having received the tenant's forwarding address in writing. If the landlord fails to do this, the landlord must pay the tenant double the amount of the security deposit. In this case, the landlords received the tenants' forwarding address on July 30, 2018 and applied to retain the security deposit within 15 days of that date. Therefore I find the tenants are not entitled to the return of double their security deposit. As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$554.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$554.00 of the \$1,300.00 security deposit in full satisfaction of the monetary award. The tenants are entitled to the remaining \$746.00 security deposit balance.

Conclusion

The landlords are entitled to \$554.00. I order the landlords to retain \$554.00 from the security deposit in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposit. I therefore grant the tenants a monetary order for the balance of the deposit, in the amount of \$746.00.

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 26, 2018

Residential Tenancy Branch