



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for unpaid rent, for a monetary order for damages or compensation under the *Act*, permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing documents had been sent to the Tenants by registered mail on August 8, 2018, two Canada post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or compensation under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2017, as a one-year fixed term tenancy. Rent in the amount of \$3,000.00 was to be paid by the first day of each month and the Landlord had been given a \$1,500.00 security deposit.

The Landlord testified that Tenants did not pay the rent for July 2018. The Landlord provided a copy of a 10-day Notice for unpaid of rent that she had served on the Tenants and a copy of the tenant ledger into documentary evidence. The Landlord is requesting a monetary order for July 2018 rent, in the amount of \$3,000.00, and \$25.00 late for that month.

The Landlord testified that the Tenants moved out of the rental unit on July 21, 2018, and that the move-out inspection was conducted with the Tenants that same day. The Landlord provided a copy of the move-in/move-out inspection report into documentary evidence.

The Landlord testified that the Tenants had returned the rental property to her uncleaned and that the Tenant had left garbage and discarded personal items inside of the rental unit. The Landlord testified that the interior of the rental property required 15 hours of cleaning, at the cost of \$450.00, \$182.70 to have the garbage and personal items removed and \$367.50 to have the carpets cleaned. The Landlord also testified that the yards around the rental property had not been cared for, and it had cost her \$100.00 to have the yard mowed and cleaned up. The Landlord provided 30 pictures of the rental property at the end of tenancy and four invoices for the work she had completed on the property into documentary evidence.

The Landlord testified that the Tenants did not return the keys to the rental unit to her at the end of the tenancy. The Landlord testified that she spent \$188.74 to have the locks changed, the Landlord submitted a copy of the invoice to have the locks changed.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that the Tenants did not pay the rent for July 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenants breached section 26 of the *Act* when they did not pay the rent in accordance with the tenancy agreement. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that she took reasonable steps to minimize the losses due to the Tenants' breach. Therefore, I find that the Landlord has established an entitlement to a recovery of the unpaid rent for July 2018, and I award the Landlord the amount of \$3,000.00.

The Landlord has also claimed \$25.00 in a late fee for the late payment of the July 2018 rent. I have reviewed all of the documentary evidence submitted by the Landlord in this case, and I find that the Landlord has not provided a copy of the tenancy agreement. In the absence of that agreement, I find that the Landlord has not proven that late fees were an agreed-upon term of the tenancy between these parties. Therefore, I dismiss the Landlord's claim for an award of \$25.00 in late fees.

I accept the undisputed testimony of the Landlord that the Tenants had not returned the rental unit to the Landlord clean. Section 37 of the *Act* states the following:

Leaving the rental unit at the end of a tenancy

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenants breached section 37 of the *Act* when they did return the rental unit to the Landlord in a reasonably clean condition. I also find that the Landlord has provided sufficient evidence to prove the value of that loss that she suffered and that she took reasonable steps to minimize the losses due to the Tenants' breach.

Therefore, I find that the Landlord has established an entitlement to the recovery of her cleaning cost for the rental unit. I award the Landlord the amount of \$1,099.85; consisting of the recovery of \$450.00 in clean service, \$100.00 in law care and mowing services, \$182.70 in garbage removal, and \$367.15 in carpet cleaning cost.

I also accept the undisputed testimony of the Landlord that the Tenants had not returned the keys to the rental unit to the Landlord at the end tenancy. I find that the Tenants breached section 37 of the *Act* when they did return the keys to the rental unit at the end of the tenancy. However, I have reviewed the invoice provided into evidence, by the Landlord, to show her costs for re-keying of the rental unit. I note that the invoice includes costs for dryer repair, that she has not claimed for in her application. I am unable to determine what portion of this invoice is for dryer repair and what portion is for the re-keying of the rental unit. I find that the Landlord has not provided sufficient evidence to prove the value of that loss that she suffered due to the Tenants not returning the keys to the rental unit at the end of the tenancy. Therefore, I dismiss the Landlord's claim for the recovery of her cost to have the rental unit re-keyed in the amount of \$188.74.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in her

application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a Monetary Order in the amount of \$2,699.85; consisting of \$3,000.00 in unpaid rent, \$1,099.85 in cleaning costs, and \$100.00 for the recovery of the filing fee, less the \$1,500.00 security deposit that the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,699.85**. The Landlord is provided with this Order 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: December 11, 2018

Residential Tenancy Branch