



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and damage or compensation pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlords appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The tenants did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional twenty minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct participant code for the tenants had been provided.

The landlords testified the tenants were served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 30, 2018. Further to section 90, the registered mail is deemed received by the tenants five days later, on September 5, 2018. In support of service, the landlord provided the Canada Post

tracking numbers and copies of Canada Post receipts. Pursuant to sections 89 and 90, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on September 5, 2018.

Issue(s) to be Decided

Are the landlords entitled to the following:

- A monetary order for unpaid rent and damage or compensation pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlords testified the month-to-month tenancy agreement with the tenants began on October 1, 2017 and ended on August 14, 2018 when the tenants abandoned the unit without notice. The landlords submitted a copy of the signed tenancy agreement as evidence. Rent was \$2,500.00 a month payable on the first of the month. The tenants provided a security deposit of \$650.00 which the landlords hold. The tenants have not provided authorization to the landlords to retain the security deposit.

The landlords stated that at the beginning of the tenancy, the landlords reduced the security deposit payable by \$600.00 on the promise by the tenants to paint the unit. However, the tenants did not paint the unit and did not pay any additional security deposit.

The landlords testified the tenants did not pay rent due August 1, 2018 and a balance of \$2,500.00 remains owing. The landlords personally served the tenants with a 10 Day Notice to Vacate for Unpaid Rent or utilities on August 10, 2018 for unpaid rent. The landlords provided uncontradicted evidence that the tenants did not dispute the Notice

nor did they make any payment on rent before vacating shortly afterwards. A copy of the Notice was submitted as evidence. The landlords filed for dispute resolution on August 27, 2018.

The tenants were required to pay utilities pursuant to the terms of the tenancy agreement. The tenants paid the utilities except for two outstanding invoices in the amount of \$303.18 and \$312.11 which were due at the end of the tenancy. The landlord has paid these outstanding invoices and requests reimbursement from the tenants. Copies of the invoices were submitted as evidence.

The parties did not conduct an inspection on moving in or moving out.

The landlords testified they were unable to rent the unit until September 1, 2018 because of cleaning and repairs required after the tenants vacated. The landlord claimed that considerable cleaning and repairs were required. They submitted copies of photographs showing the condition of the unit when the tenants moved in and the condition when they moved out in support of their claim that work was needed to clean and repair the unit. The landlords did not make a monetary claim for cleaning or damages.

The landlords request a monetary award of **\$3,165.29** as follows:

ITEM	AMOUNT
Outstanding rent – August 2018	\$2,500.00
Outstanding utility	\$303.18
Outstanding utilities	\$312.11
Reimbursement of security deposit reduction	\$600.00
Filing fee reimbursement	\$100.00
(Less security deposit)	(\$650.00)
Total	\$3,165.29

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based upon the uncontradicted testimony and evidence presented by the landlords, the burden of proof, I find on a balance of probabilities that the landlord has established a claim against the tenant for outstanding rent and unpaid utilities.

I find the landlords are not entitled to reimbursement in the amount of \$600.00. The landlords testified they did not pay this amount; instead, the tenants were granted a reduction in the amount of security deposit they were required to pay the landlords. As such, the landlords have not met the burden of proof of establishing they suffered a loss with respect to this claim which is dismissed without leave to reapply.

As the landlord has been successful in his claim, I award the landlord reimbursement of the cost of the filing fee pursuant to section 72 in the amount of \$100.00.

I grant the landlord authorization to apply the security deposit to the monetary award.

I grant the landlords a monetary order in the amount of **\$2,565.29** as follows:

ITEM	AMOUNT
Outstanding rent – August 2018	\$2,500.00
Outstanding utility	\$303.18
Outstanding utility	\$312.11
Filing fee reimbursement	\$100.00

(Less security deposit)	(\$650.00)
Total	\$2,565.29

Conclusion

The landlords are entitled to a monetary order in the amount of **\$2,565.29**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) to be 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 21, 2018

Residential Tenancy Branch