



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (Application) pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant C.G. (the tenant) indicated that they would be the primary speaker during this hearing.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence which were sent to them by registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the tenants are duly served with the Application and evidence.

The landlord acknowledged receipt of the tenants' evidence which was personally served to him on December 12, 2018. The landlord stated that he was able to review the evidence. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenants' evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and for damage or loss under the *Act*, Regulations or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord testified that this tenancy began on August 01, 2017, with a monthly rent of \$1,300.00, due on the first day of each month and a security deposit in the amount of \$650.00 that the landlord currently retains.

The landlord also provided in evidence:

- A copy of a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated July 02, 2018, for \$400.00 in unpaid rent;
- A copy of a previous decision from the Residential Tenancy Branch date June 01, 2018, in which the landlord and the tenant agreed that the monthly rent is \$1,300.00 and that the tenancy will end as of 1:00 p.m. on July 31, 2018; and
- A copy of a text message exchange between the landlord and the tenant on August 06, 2018, in which the tenant states that they will be back on August 08, 2018, to finish up everything and will give their forwarding address at that time.

The tenants provided in evidence:

- A copy of a receipt for a moving van dated July, 31, 2018;
- A copy of a receipt for a storage facility effective as of July 31, 2018;
- A copy of a witness statement dated November 30, 2018, from a witness who states that the tenants gave the landlord a bike as payment to stay an extra night at the rental unit; and
- A copy of a receipt for a hotel effective as of August 01, 2018.

The landlord testified that the tenants only paid \$900.00 for July 2018 but that the rent is \$1,300.00. The landlord stated that they are seeking to recover the unpaid rent for July 2018 in the amount of \$400.00.

The landlord submitted that the tenants did not fully vacate the rental unit until August 08, 2018, and that the landlord suffered a loss of income from the rental unit in the amount of \$1,300.00 due to the unpredictable nature of the tenants which impacted the landlord's ability to rent out the rental unit for August 2018.

The tenant confirmed the amount paid for rent for July 2018 and stated that they were recovering previous overpayments of rent. The tenant stated that the landlord accepted a bike for payment in lieu of rent to stay at the rental unit until August 01, 2018, and that they had removed the majority of their belongings from the rental unit by that time. The tenant testified that the rest of their belongings were retrieved by August 04, 2018, to which the landlord agreed at the time.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

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.

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*. The tenants did not provide any evidence that they were entitled to deduct any amounts from their rent.

Having reviewed the evidence and the testimony, I find that it is undisputed that the tenants paid \$900.00 in rent for July 2018. I find that the tenants were obligated to pay the monthly rent for July 2018 in the amount of \$1,300.00 as per the previous RTB settlement between the parties. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$400.00 for unpaid rent owing for July 2018.

Section 37 of the Act states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends and that at the end of the tenancy the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Regarding the landlord's claim for a loss of rent for August 2018 in the amount of \$1,300.00, although the tenancy ended on July 31, 2018, I find that the tenant still had belongings which needed to be cleaned out after this date. I accept the tenant's testimony and evidence that they stayed at a hotel as of August 01, 2018; however, based on a balance of probabilities, I find that the text message exchange on August 06, 2018, supports the landlord's testimony that the tenants were still cleaning out the rental unit as of August 08, 2018.

For the above reason I find that the landlord did incur a loss due to the violation of section 37 of the Act by the tenants in not delivering full peaceable vacant possession of the rental unit as of August 01, 2018. Despite the landlord suffering a loss under the Act for August 2018, I find that they have not demonstrated that they tried to mitigate their loss of rent for August 2018 by providing evidence to show they attempted to rent out the rental unit, which was impeded by the tenants' actions. For this reason I find that they are not entitled to the full months' rent for August 2018.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

RTB Policy Guideline #16 states that an arbitrator may award nominal damages where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the landlord had the legal right to vacant possession as of August 01, 2018. Therefore, I find that the landlord is entitled to nominal damages in the amount of \$150.00 for the tenants' failure to remove all of their belongings from the property until August 08, 2018, in violation of section 37 of the Act.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in full satisfaction of the monetary award in the following terms for unpaid rent and for compensation for damage or loss under the Act, Regulations or tenancy agreement. No interest is payable over this period.

Item	Amount
Unpaid July 2018 Rent	\$400.00
Nominal Damages August 2018	150.00
Less the Security Deposit	-650.00
Filing Fee for this application	100.00
Total Monetary Order	\$0.00

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: December 21, 2018

Residential Tenancy Branch