



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on January 4, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- a monetary order for unpaid rent;
- authorization to retain all or a portion of the Tenants' security deposit in satisfaction of the monetary order; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenants' evidence. One of the Tenants, J.P., stated that the other tenant listed on the tenancy agreement, C.S., moved out as of May 2018, and she is no longer a Tenant. I note that the Landlord was not made aware that C.S. had moved out, and I also note that there is no evidence to support that she was living anywhere else up until the end of the tenancy (September 2018). Given the evidence before me, which includes a tenancy agreement listing both C.S. and J.P. as tenants, I find both of these individuals were tenants, and are jointly responsible for the issues pertaining to this tenancy up until the end, in September of 2018.

Further, I note the Landlord personally served the Tenant, J.P., with both Notice of Hearing packages (one for each Tenant) on September 7, 2018. The Landlord was unaware C.S. was no longer living there as he was not properly notified. Although C.S. was not personally served in the manner J.P. was, pursuant to section 71(2)(b), I find

both tenants were sufficiently served with the Notice of Hearing and evidence packages from the Landlord. Both Tenants were present and ready to respond to the issues identified on the application.

The Landlord was informed during the hearing that he would have to re-apply for his claim for damage to the rental unit, as it was not identified on his application form, nor did he file an amendment. The Landlord is granted leave to apply for compensation for any potential damage left behind by the Tenants.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord provided a copy of a previous arbitration hearing with the Tenants, where some of the issues brought forward today were already heard. The previous arbitration hearing was about an alleged “illegal rent increase” (which there wasn’t), non-payment of rent, and an order of possession. The arbitrator made several findings with respect to the issues and evidence. The arbitrator found that rent was \$825.00, and the extra \$150.00 monthly amount paid by the Tenants for an additional occupant during the 20 month period (June 2016 until April 2018) was enforceable, payable, and was not an

illegal rent increase. The arbitrator found that the Tenants were Estopped from seeking to recover the \$150.00 x 20 months.

The Tenant has submitted written statements seeking to correct, re-argue and change some of the statements and findings made at the previous hearing.

Both parties agree that monthly rent at the material time for this hearing (May through September 2018) was \$825.00. The Landlord stated that he currently holds \$825.00 in total for the security and pet deposit. The Landlord is looking to recover unpaid rent over the months from May - September 2018. The Landlord stated that no rent was paid for May, June or July of 2018. The Landlord stated that the Tenants paid \$300.00 for August 2018, and nothing for September 2018. The Landlord stated that the Tenants did not hand back the keys and schedule a move-out inspection until September 11, 2018.

The Tenants stated that they overpaid rent by \$150.00 per month over a period of 20 months (June 2016 until April 2018). The Tenants deny that they had an extra guest or that they should be asked to pay that additional amount for 20 months. As such, the Tenants stated that they withheld rent for May, June, July and part of August in order to make up for what they believe was an overpayment ("illegal rent increase"). The Tenants also acknowledge that they did not pay rent for September 2018 and that they returned the keys on September 11, 2018.

The Landlord stated that he is looking for the full month of September 2018 in rent because the Tenants left mid-month, paid nothing, and left the rental unit in disrepair.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

With respect to the previous arbitration, I find it important to note that the issues and findings made and decided upon at that hearing are binding and enforceable, and this is not an opportunity to reapply, re-hear, correct, or clarify arguments, statements or findings made on those issues.

As laid out in the previous arbitration, the Tenants are not entitled to recover the \$150.00 "overpayment" or "illegal rent increase" they believe occurred. The arbitrator

found that rent was \$825.00, and the extra \$150.00 monthly amount paid by the Tenants for an additional occupant during the 20 month period (June 2016 until April 2018) was enforceable, payable, and was not an illegal rent increase. The arbitrator found that the Tenants were Estopped from seeking to recover the \$150.00 x 20 months, and were not entitled to withhold rent to offset this alleged overpayment. As such, the Tenants were not entitled to withhold what they believe was an overpayment.

The consistent evidence is that monthly rent was \$825.00 from May 2018 onwards, as no additional guest fee of \$150.00 was added on or payable. The evidence before me indicates that the Tenants only paid \$300.00 over the period of time from May 2018 until they moved out in September 2018. I find rent in the amount of \$825.00 was due for each of these months, and the Tenants were not legally entitled to withhold any of this money.

I find the Tenants owe the following in unpaid rent:

- \$825.00 - May 2018
- \$825.00 - June 2018
- \$825.00 - July 2018
- \$525.00 - August 2018
- \$825.00 - September 2018
- Total: \$3,825.00

I find the Tenant are responsible for September 2018 rent, due to the fact they vacated the rental unit part way through the month and the Landlord was not able to re-rent it until the following month, due to the timing of their departure.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make the application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Unpaid rent	\$3,825.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$3,925.00
LESS: Security Deposit	\$825.00
Total Amount	\$3,100.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$3,100.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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: January 7, 2019

Residential Tenancy Branch