



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord "CT" (the "landlord") attended the hearing by way of conference call. The tenant did not attend this hearing, although I waited until 1:40 P.M. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 P.M. The landlord attending the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on November 20, 2018, the tenant was sent by way of Registered Mail the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the landlord's evidence. The Canada Post tracking number was provided as evidence during the hearing.

The landlord testified that the tenant had provided his forwarding address, and that the dispute resolution hearing package and evidence was mailed to that address provided by the tenant. The registered mailed item was returned by Canada Post. I find that the

address to which the landlord mailed the dispute resolution hearing package was the address provided by the tenant as his forwarding address for service of documents related to the tenancy.

Section 90 of the *Act* determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the dispute resolution hearing package, and accompanying evidence, on November 25, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that the tenancy began on June 01, 2015. The monthly rent was determined to be \$1,800.00, which was due on the first day of each month. The landlord stated that the tenant provided a security deposit in the amount of \$900.00 which continues to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement signed by both parties, which confirms the details provided orally by the landlord.

The landlord provided that at the start of the tenancy, there were two tenants who had signed the tenancy agreement to enter into a tenancy with the landlord. However, the second tenant "SA" vacated the rental unit in July 2015, and that the tenant "RS" continued to reside at the rental unit as the sole tenant with respect to the tenancy.

The landlord testified that the tenancy ended when the tenant vacated the rental unit on December 03, 2016, after being served a 10 Day Notice to End Tenancy for Unpaid

Rent (the Notice) dated November 18, 2016, which the landlord states was served to the tenant on November 18, 2018, for \$4,500.00 in unpaid rent.

The landlord provided that after the tenant had vacated the rental unit, the landlord met with the tenant at the rental unit. The landlord provided that there was extensive damage to the rental unit. The tenant was not permitted to have pets as a term of his tenancy agreement; however, the tenant kept a pet without permission from the landlord. There was extensive damage due to the pet, such as dog hair being embedded in the carpets, claw marks being left on the floors, baseboards and walls, and dog food left strewn about the floors of the rental unit.

The landlord testified that the rental unit smelled heavily of smoke, and that there was damage to the walls, such as holes and marks in the walls. The landlord stated that the carpets were stained, and that some stains appeared to be from pet urine. The rental unit was not cleaned after the tenant vacated the rental unit, as the tenant made no attempt to do so. The landlord had to undertake extensive cleaning of the rental unit, which included steam cleaning the carpets, numerous attempts of general cleaning of the rental unit, and remedial action to repair damage to the walls, floors, baseboards, and carpet. The landlord testified that the rental unit was in new condition when the tenancy began.

The landlord testified that the tenant remains in arrears with respect to rent at the end of the tenancy. The landlord provided that the tenant failed to pay rent in the amount of \$900.00 for July 2016, as only a partial payment was provided for that month. The landlord testified that the tenant failed to pay rent in the amount of \$1,800.00 for October 2016, and failed to pay rent in the amount of \$1,800.00 November 2016. The total amount of unpaid rent for which the landlord seeks a monetary order is \$4,500.00.

The landlord testified that the tenant was responsible for the payment of all utilities during the tenancy, and that during the course of the tenancy, the tenant was usually able to pay the cost of the utilities. The utility services were such that the accounts for all utilities were in the name of the tenant. At the end of the tenancy, the account for the electricity services remained unpaid, and a balance of \$363.32 remains unpaid. The landlord provided as evidence a copy of the utility bill for the electricity service, which shows that the account is in the tenant's name and that a balance of \$363.32 remains owing and that the debt was transferred to the landlord as the property owner.

The landlord provided as evidence a copy of a "promissory note" dated December 03, 2016, which was signed by the tenant and the landlord. The contents of the note depict

that the tenant agrees that he has not paid rent for the months of July 2016, October 2016, and November 2016, and that he remains liable for the balance of unpaid rent in the amount of \$4,500.00.

The note also depicts that the tenant acknowledges that he is liable for unpaid utility charges in the amount of \$254.47. The note further demonstrates that the tenant promises to pay the total sum of unpaid rent and unpaid utility charges, in the amount of \$4,757.47 by January 31, 2017.

The landlord testified that at the time of signing the promissory note, the tenant agreed to relinquish his security deposit as a result of the extensive damage to the rental unit and due to the unpaid rent and utility charges that he acknowledged he was to remain liable for. The note depicts that the deposit would not be returned to the tenant at the time that the note was signed. The landlord further provided that once the final utility bill was received, the amount of the unpaid utility charges increased to \$363.32, which is the amount sought by the landlord for the portion of the monetary claim related to unpaid utility charges.

The total monetary claim sought by the landlord for unpaid rent and unpaid utility charges is \$4,863.32.

The landlord testified that she had contacted the tenant to recover the unpaid amount owed by the tenant, and to convey to the tenant that the security deposit would not be returned, as per the signed agreement depicted in the promissory note. The landlord provided that the tenant did not agree to compensate the landlord in accordance with the terms of the note. The landlord testified that she told the tenant that she would apply for dispute resolution to recover the money owed and to retain the security deposit, and that the tenant responded that the landlord could do as she wished.

Analysis

Pursuant to section 46 of the *Act*, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the *Act* sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the uncontested testimony provided by the landlord, which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the *Act* or by mutual agreement between the parties.

As per section 26 of the *Act*, and in accordance with the tenancy agreement between the parties, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

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.

The landlord provided undisputed testimony and evidence demonstrating that the tenant did not provide full payment of rent owed in the amount of \$4,500.00 for the months of July 2016, October 2016, and November 2016, thereby resulting in rental arrears as set out above, and in unpaid utility charges totalling \$363.32.

The contents of the promissory note, which was signed acknowledged by the tenant, effectively serve as the tenant’s confirmation and acceptance that he owes unpaid rent, as detailed above, and further depicts the tenant’s acceptance that he is liable for unpaid utility charges. The note also provides that the tenant acknowledged that the security deposit would not be returned to him.

I accept the uncontested evidence offered by the landlord with respect to the tenant’s failure to pay the total rental arrears owed for the months of July 2016, October 2016, and November 2016. Therefore, I find that the landlord is entitled to a Monetary Order of \$4,500.00 for unpaid rent.

I accept the uncontested evidence offered by the landlord with respect to the tenant’s failure to pay the utility charges owing in the amount of \$363.32, and therefore find that the landlord is entitled to recover that sum as part of the Monetary Order.

The unpaid utility charges stem from a utility account in the tenant’s name, as the terms of the tenancy agreement, as detailed by the landlord, were such that the tenant was to be responsible for the utilities. Although the unpaid utility charges are such that the

arrears for the account can be seen as an unpaid debt between the account holder (the tenant) and the utility provider (the municipality), I find that the landlord has established that as a result of the tenant's failure to pay the utility, the utility provider has sought payment from the landlord.

The rental unit is located within a municipality which administers utility accounts for the properties within its jurisdiction. Therefore, as the landlord is the owner of the property which comprises the rental unit, the outstanding utility charges associated with the rental unit become an unpaid sum owed to the municipality for which the landlord, as the legal owner of the property, is held liable, if the unpaid debt remains outstanding.

If the landlord pays the unpaid charges to the municipality in order to settle the debt owed for the account associated with the rental unit, the landlord's only recourse to recover the sum owed for payment of the unpaid utility charges is to recover the sum from the tenant. The landlord has provided sufficient evidence to establish that this debt was transferred from the tenant to the landlord by the utility provider. For these reasons, I find that it is open to the landlord to recover the sum owed for the unpaid utility charges, and accordingly, as stated above, I award the landlord a monetary award in the amount of \$363.32 for unpaid utilities.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utility charges, to retain the tenant's security deposit, and to recover the filing fee:

Item	Amount
Unpaid Rent owed for July 2016	\$900.00
Unpaid Rent owed for October 2016	1,800.00
Unpaid Rent owed for November 2016	1,800.00
Unpaid Utility charges owed	363.32

Less Security Deposit permitted to be kept	(900.00)
Filing Fee for this application	100.00
Total Monetary Order awarded to landlord	\$4,063.32

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 28, 2019

Residential Tenancy Branch