



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The female landlord and the tenant did not attend this hearing, which lasted approximately 59 minutes. The male landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the female landlord at this hearing (collectively "landlords").

The landlord testified that he served the tenant with a copy of the landlords' application for dispute resolution hearing package on December 21, 2018, by way of registered mail to the tenant's place of employment. The landlord stated that he received a substituted service decision, dated December 17, 2018, from an Adjudicator, allowing him to serve using this method. The landlord provided a Canada Post tracking number verbally during the hearing. The landlord confirmed that on February 1, 2019, the package was hand delivered by the receptionist to the tenant at the tenant's place of employment. The landlords provided an email confirming this delivery. The landlord claimed that it took longer because the tenant was working odd hour shifts and the receptionist was unable to serve him personally until then. In accordance with sections 89 and 90 of the *Act*, and the substituted service decision of December 17, 2018, I find

that the tenant was deemed served with the landlords' application on December 26, 2018, five days after its registered mailing. I reviewed the substituted service decision, dated December 17, 2018, confirming the above information is correct.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to remove the name of the female tenant, that was originally included in the style of cause. The landlord requested this amendment, indicating he could not serve the female tenant and he did not obtain a substituted service order for her so he did not want to pursue this claim against her.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on August 1, 2015 and was for a fixed term ending on January 31, 2016 after which it became a month-to-month tenancy. The tenancy ended on September 20, 2017, when the landlords' cleaners went into the property and discovered it was empty, since the landlord had been out of town. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. No security deposit was paid for this tenancy. No move-in or move-out condition inspection reports were completed for this tenancy. No written forwarding address was provided by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlords seek a monetary order of \$22,357.22 plus the \$100.00 application filing fee. The landlords provided photographs of the rental unit after the tenant moved out. The landlords also provided invoices and receipts for various expenses.

The landlords seek \$100.00 for a previous hearing filing fee and \$60.69 for previous hearing postage fees. The file number for that previous hearing appears on the front page of this decision. The landlord claimed that a previous hearing for this tenancy occurred on November 27, 2018, after which a decision of the same date was issued by a different Arbitrator. The Arbitrator at that hearing dismissed the landlords' application with leave to reapply because the landlord did not properly serve the tenants and only the landlord attended that hearing, not the tenants.

The landlords seek \$6,469.00 for unpaid rent, modifying this claim from the original \$6,969.00 amount. The landlord claimed that the tenant failed to pay rent of \$1,769.00 for the entire year of 2016 and \$4,700.00 from January to August 2017, while living in the rental unit. He confirmed that he was not seeking September 2017 rent from the tenant.

The landlords seek \$9,000.00 for lost rent income from October 1, 2017 to June 30, 2018. The landlord stated that he sold the rental unit on June 30, 2018 and he did not rent it out after the tenant moved out. He said that the tenant's actions caused him to list the rental unit for sale and that he suffered a loss in fixing the place up for sale.

The landlords seek \$2,252.50 for supplies, \$419.28 for fuel, \$155.75 for meals and \$2,850.00 (144 hours at \$25.00 per hour) for labour for having to repair the rental unit after the tenant vacated. The landlord claimed that he did all the repair work himself. He said that he is not a professional repair person but that he is a handyman. He explained that he lives in Alberta and had to travel back to B.C. in order to fix up the rental unit, he had to use his 1 tonne diesel truck which was expensive on gas, and he had to eat meals while performing repairs. The landlords provided receipts and invoices for many of the expenses but not all. The landlord provided a breakdown of supply expenses per store but not a clear indication of what was being bought in each receipt or invoice, claiming that he performed painting, drywall repair, new locks, and other repairs to the inside and outside of the rental unit.

The landlords seek \$450.00 total to have the rental unit cleaned twice by professionals. They provided one invoice for the \$350.00 but no receipt for the remaining \$100.00.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlords' claim for the previous hearing \$100.00 application filing fee and \$60.69 in postage fees, without leave to reapply. I informed the landlord that the filing fee was already dismissed at the previous hearing and the postage fees do not relate to this hearing. Further, the only hearing-related fees recoverable under the *Act* are for filing fees, not postage.

I award the landlords \$6,469.00 in unpaid rent for this tenancy from January 1, 2016 to August 31, 2017. The landlord provided undisputed evidence that the tenant failed to pay this rent while residing in the rental unit.

I dismiss the landlords' claim for a loss of rent income of \$9,000.00 from October 2017 to June 2018, without leave to reapply. The landlords did not re-rent the unit after the tenant moved out. The parties did not sign a fixed term tenancy agreement beyond January 31, 2016. The landlords did not provide any listings, sale documentation or other such documentary evidence to show that they suffered a loss in the rental unit sale price due to the tenant's actions.

I dismiss the landlords' claim for renovations of \$2,252.50 and labour of \$2,850.00, without leave to reapply. The landlords did not provide receipts for their entire claim, some were only invoices with a balance due. Further, I find that the landlord was unable to clearly explain all of the items he bought and all of the work he did, as appeared to be confused when going through his paperwork during the hearing. Moreover, the landlord is not a professional contractor and could not provide

documentary evidence to show how he arrived at the \$25.00 per hour wage for him to do the labour work at the rental unit.

I dismiss the landlords' claim for \$419.28 for fuel and \$155.75 for meals to complete the above repairs, without leave to reapply. I find that the landlord chooses to live far away from the rental unit and to travel back and forth to take care of tenancy issues. This is the cost of doing business as a landlord.

I dismiss the landlords' claim for cleaning of \$450.00, without leave to reapply. The landlord claimed that he paid the cleaners by e-transfer but did not provide his bank records or emails to confirm same.

Since the landlords did not collect a security deposit from the tenant, I dismiss their application to retain the deposit, without leave to reapply.

As the landlords were partially successful in this application, I award them the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$6,569.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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: March 11, 2019

Residential Tenancy Branch