



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties 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.

The tenants confirmed receipt of the landlord's amended application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's amended application and evidence. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy began on June 21, 2018. Monthly rent was set at \$4,250.00, payable on the 21st day of each month. The landlord collected a security

deposit of \$2,125.00 which the landlord still holds. The landlord testified that this tenancy ended on October 1, 2018, while the tenants testified that it ended on September 14, 2018.

The landlord is requesting monetary compensation as follows:

Unpaid Rent for Sept 21-Oct 20, 2018	\$4,250.00
Writ of Possession Filing Costs	120.00
Bailiff Fees	2,295.23
Cleaning	300.00
Junk Removal	150.00
Process Server	95.00
Total Monetary Award Requested	\$7,210.23

The landlord testified that he was granted an Order of Possession after an *ex parte* direct request proceeding held on September 17, 2018. As the tenants failed to move out after being served the Order of Possession, the landlord had to attend the Supreme Court to file for a Writ of Possession. The landlord then had to obtain the services of a Bailiff in order to remove the tenants on October 1, 2018. The landlord provided invoices, as well as a statement from the Bailiff dated October 16, 2018 confirming the removal. The landlord is applying for the costs associated with the tenants' failure to comply with the *Act* and Orders.

Furthermore, the landlord testified that the tenants' check for the period of September 21 to October 20, 2018 was returned as non-sufficient funds. The landlord provided the bank statement confirming that the funds were not deposited. The landlord provided invoices and receipts in support of their monetary losses.

The landlord also testified that the tenants failure to properly remove all their belongings and clean the rental unit upon vacating the rental unit as the tenants were still in the process of moving on October 1, 2018 when the bailiff attended. The landlord testified that there was still dog urine and cigarette butts left by the tenants as well as garbage and personal belongings. The landlord testified that it took 4 hours for 2 people to clean the rental unit.

The tenants dispute the move-out date, testifying that they had moved out earlier on September 15, 2018. The tenants testified that they received a phone call to attend the property on October 1, 2018. The tenants also dispute the landlord's monetary claims, stating that although they had left some boxes behind, as well as a trampoline and couch, they were not allowed back to retrieve their personal belongings. The tenants

testified that the bailiffs had contributed to the mess. The tenants admit that they had not returned the keys to the landlord as they did not have contact with the landlord.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

I find that the landlord provided sufficient evidence to support that the tenants failed to move out as required by the Order of Possession dated September 17, 2018. I also find that the landlord provided sufficient evidence to support that due to the tenants' failure to comply with the *Act* and the Adjudicator, the landlord suffered further losses associated with the removal of the tenants and their property. I accept the evidence of the landlord and the Bailiff that the tenants did not properly vacate the home as of October 1, 2018, and accordingly I find that this tenancy ended on October 1, 2018.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenants were obligated to pay the rent as per the tenancy agreement and the *Act*. I find that the landlord provided sufficient evidence to support that the rent cheque for September 21 to October 20, 2018 was returned as non-sufficient funds, and that this tenancy did not end until October 1, 2018. On this basis, I allow the landlord's monetary claim for unpaid rent in the amount of \$4,250.00.

I also find that the landlord provided sufficient evidence to support the losses associated with the removal of the tenants by the bailiff after obtaining a Writ of Possession. Accordingly, I allow the landlord's monetary claim for reimbursement of the filing costs, cost of the process server, and cost of obtaining the services of the bailiff.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidential materials submitted by the landlord, as well as the sworn testimony of both parties.

I find that the tenants did not dispute the fact that they had left some items behind at the end of this tenancy. I also accept the landlord's evidence, which was supported by the statement of the bailiff, which the tenants failed to properly clean the rental unit and remove their personal belongings. On this basis, I allow the landlord to recover the cost of cleaning and junk removal as claimed.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in their application, I find that the landlord is entitled the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$2,125.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$5,185.23 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenants' security deposit in satisfaction of their monetary claim.

Unpaid Rent for Sept 21-Oct 20, 2018	\$4,250.00
Writ of Possession Filing Costs	120.00
Bailiff Fees	2,295.23
Cleaning	300.00
Junk Removal	150.00
Process Server	95.00
Filing Fee	100.00
Less Security Deposit	-2,125.00
Total Monetary Award	\$5,185.23

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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 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: March 13, 2019

Residential Tenancy Branch