Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty-five minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlords testified that the tenant did not provide a forwarding address when she vacated the unit on November 1 or 2, 2018. The landlords learned of the tenant's new address when notified by the tenant she had commenced arbitration proceedings which

resulted in an arbitrator's decision on November 19, 2018. This address to which the landlords sent the Notice of Hearing and Application for Dispute Resolution by registered mail on November 21, 2018 to the tenant is the address provided by the tenant in the previous arbitration hearing. The landlords submitted the Canada Post tracking number is support of service referenced on the first page of this decision.

Further to sections 89 and 90 of the *Act*, I find the landlords served the tenant on November 27, 2018, five days after mailing.

The landlords filed an Amendment to an Application for Dispute Resolution on March 6, 2019 amending their monetary claim with respect to a drywall repair expense. As the landlords did not submit evidence they served the tenant with the Amendment, I find the Amendment is not admissible.

Preliminary Mater – Amendment

When the landlords filed their claim on November 22, 2018, they submitted an estimate with respect to dry wall repairs included in their claim in the amount of $175.00. The landlords subsequently incurred the expense of the repair in the amount of $488.25; they sought to amend their claim to increase the claim for dry wall repairs to $488.25.

Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. At the time the landlord brought the application, the landlords had not conducted the drywall repairs. Subsequently, the landlords testified they have incurred the repair expense in the above amount.

Further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim the amount of the repair rather than an estimate. I find the tenant is not prejudiced in allowing this amendment. I accordingly allow the landlords to amend the application in this regard to specify that their claim includes a drywall repair of $488.25.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or compensation pursuant to Section 67?

Are the landlords entitled to retain the security deposit?
Are the landlords entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The landlords testified that the one-year fixed term tenancy between the parties commenced on June 1, 2018. Monthly rent was $1,325.00 for the basement suite. The terms of the tenancy required the tenant to pay 40% of the hydro and gas for the building in which another unit was located. The landlords submitted a copy of the written tenancy agreement as evidence and documentary evidence with respect to the agreement between the parties regarding payment of utilities.

At the beginning of the tenancy, the tenant provided a security deposit of $725.00 which the landlords held. The tenant did not provide the landlord with authorization to retain the security deposit.

At the beginning of the tenancy, the parties conducted a condition inspection. On moving out, the parties met to conduct a condition inspection. The landlords testified they noted damage and uncleanliness to which the tenant took exception; she abruptly left and did not sign the report. The landlords submitted a copy of the report signed by both parties on moving in and by the landlords alone on moving out. On moving in, the report notes the unit is in good condition and clean in all relevant respects.

The landlords testified that the tenant vacated the unit without notice on November 1 or 2, 2018 without paying rent for the month of November 2018. The tenant did not pay the utilities the agreement required her to pay.

The landlords stated that they served the tenant with the application for dispute resolution as soon as they learned of her address in the previous arbitration and that they complied with the 15-day period for return of the security deposit under section 38(6)(b).

The landlords summarized their claim as follows:

ITEM	AMOUNT
Rent for November 2018	$1,325.00
Rent for July 2018 - balance	$327.52
Unpaid utilities	419.77
Cleaning and replacement of light bulbs	$25.00
Drywall repairs	$488.75
Washer replacement cost	$200.00
Total Disputed Claim	**$2786.04**

I will address each of the landlords' claims in turn.

As stated, the landlords provided uncontradicted testimony the tenant vacated the unit without notice in early November 2018 without paying rent for that month. The landlords testified they immediately posted the unit for rent and made their best efforts to find a replacement tenant; they entered into a new agreement mid-month for a replacement tenant commencing December 2018 at a reduced rent. The landlords claim loss of rent of $1,325.00 for the month of November 2019.

The landlords testified that in June 2018 there was water damage to the unit requiring the tenant to vacate for some time during July and August 2018. The landlords submitted considerable correspondence between the parties and their respective insurers regarding compensation of the landlords for lost rent and calculation of the amount owing by the tenant for her occupancy. The landlords testified the tenant did not pay rent to the landlords for the period she occupied the unit during these two months and the tenant owed the landlords outstanding rent from this period in the amount of $327.52. The landlords requested the tenant pay this amount and it remained owing to them. The landlords claim loss of rent in this amount of $327.52.

The landlords submitted receipts from hydro and gas utilities during the tenancy along with calculations of the portion owing by the tenant. The landlords claim reimbursement in this regard in the amount of $419.77.

The landlords testified the tenant left the unit requiring cleaning. The landlords testified they cleaned the unit themselves and requested reimbursement of $25.00 for their time

and the cost of light bulbs. They estimate they spent 1.5 hours cleaning; they incurred expenses for cleaning supplies, for which they do not request compensation. The landlords submitted photographs and notes in the condition inspection report on moving out in support of this aspect of their claim.

The landlords testified that the tenant damaged drywall which required repairs in the amount of $498.75. In support of this aspect of their claim, the landlords submitted photographs and notes on the condition inspection report on moving out. While the landlords testified they had a receipt in this amount, they did not provide the tenant with a copy as required. However, the landlords provided uncontradicted testimony they incurred a repair expense in this amount.

The landlords claimed that the tenant damaged the washer and that it could not be fixed for a reasonable amount. They testified the washer was in the house when they purchased the property. They sought a used washer as a replacement and their research indicated a likely expense of $200.00. The landlords stated they have subsequently rented the unit at a reduced rent; they have not replaced the washer and do not intend to do so.

The landlords request reimbursement of the $100.00 filing fee and the application of the security deposit to the monetary award.

The landlord requested authorization to apply the security deposit to the monetary order.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the requirements of the rules of procedure.

Loss of Rent- November 2018

The landlords claim loss of rent for November 2018 in the amount of $1,325.00. I accept the landlords' uncontradicted testimony that the tenant vacated the unit without notice in early November 2018 and did not pay rent for that month. I find that the landlords took all prudent steps to find a replacement tenant as quickly as possible to reduce their

losses. Accordingly, I find the landlords have met the burden of proof on a balance of probabilities with respect to this aspect of their claim and I grant the landlords a monetary award in the amount of $1,325.00.

Unpaid Utilities

The landlords submitted evidence of the agreement with the tenant in which the tenant agreed to pay 40% of the hydro and gas utilities for the building; they submitted copies of all relevant invoices and calculations. I find the landlords have met the burden of proof on a balance of probabilities with respect to this aspect of their claim and I grant the landlords a monetary award for payment of utilities in the amount of $419.77.

Damages and Compensation

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
In this case, the onus is on the landlords to prove they are entitled a claim for a monetary award.

The landlords did not replace the washer and did not intend to do so. The landlords did not purchase the washer in the first place and provided no information as to its age or condition. I find the landlords have not established a compensable loss. I therefore find

the landlords have not met the burden of proof on a balance of probabilities with respect to their claim regarding this item. I therefore dismiss the landlord's claim in this regard.

Considering the condition inspection report on moving in, the landlords' notes on the report on moving out, the photographs submitted and the landlords' uncontradicted affirmed testimony, I find the landlords have met the burden of proof on a balance of probabilities with respect to the remaining claims: cleaning and drywall repairs.

Security Deposit

As stated in section 38 of the *Act,* the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing. If that does not occur, section 38(6)(b) states that the landlord must pay a monetary award equivalent to double the value of the security deposit.

The landlords provided uncontradicted testimony that they served the tenant with the application for dispute resolution as soon as they learned of her address in the previous arbitration. I find the landlords have met the burden of proof on a balance of probabilities that they have complied with section 38(6)(b).

I find the landlord is entitled to reimbursement of the filing fee.

In summary, I award the landlords a monetary order in the amount of **$1,861.04** calculated as follows:

ITEM	AMOUNT
Rent for November 2018	$1325.00
Rent for July 2018 - balance	$327.52
Unpaid utilities	$419.77
Cleaning and replacement of light bulbs	$25.00
Drywall repairs	$488.75
(Less security deposit)	($725.00)
Total	**$1,861.04**

Conclusion

The landlords are entitled to a monetary order in the amount of **$1,861.04.** This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to 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: March 21, 2019

Residential Tenancy Branch