



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:52 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord HS (the landlord) confirmed that they sent the tenants separate copies of their dispute resolution hearing packages and written evidence by registered mail on December 30, 2018. They also entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipts for these registered mailings. The landlord testified that the copy sent to Tenant SM was successfully delivered, while the copy sent to Tenant CF was returned to the landlords as unclaimed. I find that the

tenants were deemed served with this package in accordance with sections 88, 89 and 90 of the *Act* on January 4, 2019, the fifth day after their registered mailing.

The landlord gave undisputed sworn testimony that they had not received any evidence from the tenants for this hearing. On this basis, I have not taken into account the tenants' evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to a monetary award for losses and damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On September 5, 2018, the tenants signed a residential tenancy agreement for occupancy of this rental unit that took effect on September 7, 2018. Monthly rent was set at \$2,350.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$1,175.00 security deposit and \$825.00 pet damage deposit.

The landlords' application for a monetary award of \$3,850.00 included the following items listed on the landlords' Monetary Order Worksheet entered into their written evidence.

Item	Amount
Unpaid October 2018 Rent	\$2,350.00
Unpaid Utilities	138.38
Missing Stuff (Garbage cans, closet, chest, show cupboard, bins)	1,000.00
Damage to Door and Faucets	600.00
Cleaning	100.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$4,188.38

Although the landlords provided photographs of some of the damaged items and locations where missing items had been, the landlords did not submit any receipts to

document their claims for "Missing stuff" or "damage to door and faucets." They said that they did replace some of these items and had receipts for these new purchases. The landlords' Monetary Order Worksheet described the above two items as being the approximate loss in value of these items.

The landlord testified that they rented a cleaning machine at a local store and spent four hours cleaning the rental unit after the tenants vacated the premises at the end of October 2018.

The landlords entered into written evidence a copy of their joint move-in condition inspection report of September 5, 2018.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 26(1) of the *Act* establishes that "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."

As I am satisfied based on the landlord's undisputed sworn testimony at this hearing that the tenants failed to pay rent that became legally due on October 1, 2018, and did not pay the requested utility payment, I allow the landlords' application for a monetary award of \$2,350.00 for unpaid rent and \$138.38 for utilities.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it

was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In the absence of any receipts for the purchase of items that went missing during this tenancy and for damage to the door and faucets, I award only a nominal amount of \$200.00 in the landlords' favour for these items. In so doing, I note that the amount claimed by the landlords was by their own written evidence an approximation and there is insufficient documentation to demonstrate that these items had value, were damaged or were taken, and have led to actual losses incurred by the landlords. I believe that the \$200.00 award is appropriate in this instance, as the existing evidence does reveal that something was lost or damaged as a result of the tenant's actions.

Based on the landlords' undisputed sworn testimony and written and photographic evidence, I accept that the landlords have done what was necessary to mitigate the tenants' exposure to losses for cleaning. I allow the landlords' claim for \$100.00 in cleaning, which I find to be a reasonable estimate of the value of the work performed by the landlords to clean this rental unit following the end of this tenancy.

Since the landlords have been successful in this application, I allow them to recover their \$100.00 filing fee.

I order the landlords to keep the tenants' deposits in partial satisfaction of the monetary award issued to the landlords.

Conclusion

I issue a monetary award in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, damage and loss, and the filing fee for their application and to retain the tenants' deposits:

Item	Amount
Unpaid October 2018 Rent	\$2,350.00
Unpaid Utilities	138.38
Missing Stuff and Damage to Door and Faucets	200.00
Cleaning	100.00
Less Security and Pet Damage Deposits	-2,000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$888.38

The landlords are provided with these Orders 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 these Orders, these Orders 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: April 15, 2019

Residential Tenancy Branch