



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 12 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. Landlord I.S. (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant with his application for dispute resolution on December 28, 2018 via registered mail. The Canada Post Tracking Number and receipt were entered into evidence to confirm this registered mailing. I find that the tenant was deemed served with the landlord's application on January 2, 2019, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began on September 15, 2018 and ended on January 15, 2019. This tenancy was originally a fixed term tenancy set to end on April 1, 2019. Monthly rent in the amount of \$1,800.00 was payable on the 15th day of each month. A written tenancy agreement and attached addendum were signed by both parties and a copy was submitted for this application.

The landlord provided the following undisputed testimony. On December 15, 2018 the tenant e-mailed the landlord his one month notice to end tenancy. Immediately after receiving the tenant's notice to end tenancy landlord D.S. put out an online advertisement for the subject rental property. When this did not yield results, the landlords put another online advertisement up on January 10, 2019 and renewed this advertisement on February 9, 2019. The January and February advertisements were entered into evidence.

The landlord testified that he found a new tenant who moved into the subject rental property on March 8, 2019.

The landlord is seeking to recover loss of rent as follows:

- January 15, 2019 – February 15, 2019 in the amount of \$1,800.00; and
- February 15, 2019 – March 7, 2019 in the amount of \$1,350.00.

The landlord testified the tenant failed to pay his water and gas bills as required under the tenancy agreement. The tenancy agreement states that water and natural gas are not included in the tenancy agreement. Section 18 of the addendum to the tenancy agreement states in part:

Gas, Electric, Water, Cable and internet are the responsibility of the tenants and are not included in the rent. The Landlord shall reimburse the Tenant every 2 months 1/3 of the cost of the gas and electric costs.

The landlord entered into evidence water bills for the following consumption periods:

- July 1, 2018 to September 30, 2018 in the amount of \$311.16; and
- October 1, 2018 to December 31, 2018 in the amount of \$64.22.

The landlord testified that he is seeking to recover the tenant's portion of the July 1, 2018 – September 30, 2018 water bill as follows:

$91 \text{ (days from July 1, 2018 – September 30, 2018)} / \$311.16 \text{ (water bill)} = \3.42
(daily rate)

$\$3.42 \text{ (daily rate)} * 15 \text{ (days in September tenant resided at property)} = \51.30

The landlord testified that he is seeking to recover the entire October 1, 2018 to December 31, 2018 water bill in the amount of \$64.22. The tenant hand wrote in the consumption period on this bill. The tenant testified that it was missing for some reason on the bill but that the consumption period was October 1, 2018 to December 31, 2018.

The landlord testified that he used the October 1, 2018 to December 31, 2018 water bill to calculate the per diem rate to be \$0.71 per day and is claiming this daily rate for the 15 days the tenant resided at the subject rental property in January 2019 for a total of \$10.59.

The landlord entered into evidence gas bills for the following consumption periods:

- December 13, 2018 to January 15, 2019 in the amount of \$255.98;
- January 15, 2019 to February 13, 2019 in the amount of \$425.90, the previous bill of \$255.98 and a late fee of \$3.84 is included in that sum. $\$425.90 - \$255.98 - \$3.84 = \166.08 ;
- February 13, 2019 to March 7, 2019 in the amount of \$325.68, a previous outstanding amount of \$172.41 is included in that bill. $\$325.68 - \$172.41 = \$153.27$.

The landlord is seeking 2/3 of the above gas charges.

The landlord testified that the tenant did not clean the subject rental property at all when he moved out and so the landlord hired a cleaner to clean the subject rental property. The landlord entered into evidence a cleaning invoice in the amount of \$172.50. The landlord entered into evidence photographs of the subject rental property which showed that it needed cleaning.

Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a

general rule this includes compensating the landlords for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In this case, the tenant ended a one-year fixed term tenancy 2.5 months early; thereby decreasing the rental income that the landlords were to receive under the tenancy agreement for the months of January, February, and March 2018. Pursuant to section 7, the tenant is required to compensate the landlords for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit as soon as possible. The landlord testified that an advertisement for the subject rental property was put up in December 2018, January 2019 and February 2019. I find that the landlord attempted to mitigate his loss by quickly putting up an advertisement for the rent of the subject rental property.

I find that the landlord is entitled to recover lost rent from January 15, 2019 to February 14, 2019 in the amount of \$1800.00. I find that the landlord is entitled to recover lost rent from February 15, 2019 - March 7, 2019 pursuant to the following calculation:

$\$1,800.00 \text{ (rent)} / 28 \text{ (days from February 15, 2019- March 14, 2019)} = \$64.29 \text{ (daily rate)}$

$\$64.29 \text{ (daily rate)} * 21 \text{ (days from February 15, 2019 - March 7, 2019)} = \mathbf{\$1,350.09}$

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the tenancy agreement and addendum to the tenancy agreement clearly state that water is not included in the rent. I find that the tenant breached the tenancy agreement by failing to pay his water bill.

I accept the landlord's calculation as to the amount the tenant owes for the water bill from July 1, 2018 to September 30, 2018 in the amount of \$51.30. I accept the landlord's testimony that the second water bill entered into evidence is for the consumption period of October 1, 2018 to December 31, 2018. I find that the tenant is responsible for the entire water bill from October 1, 2018 to December 31, 2018 in the amount of \$64.22. I find that the landlords have failed to quantify their loss from January 1-15, 2019 as no bill was entered into evidence. I therefore dismiss the landlords' claim for \$10.59 for January 1-15, 2019's water usage. Total owing for water: \$115.52.

I find that the tenancy agreement and addendum clearly state that the tenant is responsible for 2/3 of the gas bill. I find that the tenant breached the tenancy agreement by failing to pay 2/3 of the gas bill. Pursuant to Residential Policy Guideline #16, I find that the landlords are entitled to recover 2/3 of the gas bill up until new tenants moved into the subject rental property on March 8, 2019.

I find that the landlord is entitled to recover 2/3 of the gas bills as follows:

- December 13, 2018 to January 15, 2019: 2/3 of \$255.98 = \$170.65;
- January 15, 2019 to February 13, 2019: 2/3 of \$166.08 = \$110.72;
- February 13, 2019 to March 7, 2019: 2/3 of \$153.27 = \$102.18.

Total owing for gas: \$383.55.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the landlord's testimony, I find that the rental unit required significant cleaning. The landlord submitted into evidence, cleaning receipts totaling \$172.50. I find that the tenant is responsible for this cleaning fee.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee for this application from the tenant in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Loss of rent	\$3,150.09
Water bills	\$115.52
Gas bills	\$383.55
Cleaning fee	\$172.50
Filing Fee	\$100.00
TOTAL	\$3,921.66

The landlords are provided with this Order in the above terms and 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.

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 17, 2019

Residential Tenancy Branch