



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The landlord and both tenants attended the hearing, during which the landlord's agent and one of the tenants gave affirmed testimony. The tenants were given the opportunity to question the landlord's agent, however the hearing did not conclude within the time allotted, and I adjourned it to continue on May 9, 2019 at 3:30 p.m. prior to giving the landlord's agent an opportunity to question the tenant. I also ordered that the tenants be permitted to provide evidence of an e-transfer made to another agent of the landlord, and to provide a copy to the landlord immediately, and in any event prior to May 9, 2019. I also ordered that no other evidence will be accepted.

On May 9, 2019, the second scheduled date, the landlord and the landlord's agent attended the hearing, but the line remained open while the telephone system was monitored for in excess of 10 minutes and no one for the tenants joined the call.

The tenant was not subject to cross-examination, however no further testimony from the landlord was heard, and the tenants have not provided a copy of an e-transfer.

No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on May 1, 2018 and expires on May 1, 2019, and the tenants still resided in the rental unit as at April 30, 2019, the first scheduled date of this hearing. The tenancy agreement specifies rent in the amount of \$1,400.00 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level of the home is also tenanted. There is a written tenancy agreement, however a copy has not been provided for this hearing.

The landlord's agent further testified that a hearing was conducted on March 11, 2019 and the Arbitrator granted an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 30, 2019, and a copy has been provided for this hearing. The landlord's agent was not at that hearing and does not know why a monetary order was not made at that time for unpaid rent or utilities.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$249.19 for December 2018 outstanding rent;
- \$899.00 for January 2019 outstanding rent and utilities;
- \$1,744.03 for February 2019 outstanding rent and utilities;
- \$1,479.57 for March 2019 outstanding rent and utilities;
- \$1,400.00 for April 2019 rent + 40% utilities;
- \$430.00 for estimated cleaning costs.

The total claim in the Monetary Order Worksheet is \$6,201.79 + 40% utilities for April. Copies of utility bills for gas and electricity have been provided for this hearing, along

with numerous text messages and other evidentiary material, however utility bills for April, 2019 were not available in time for this hearing.

The tenant testified that she is currently in hospital and has been for almost 4 weeks. The tenant was at the March 11, 2019 hearing but has not received any mail so does not know what the Decision says, and the tenant has no access to email.

The tenant also testified that rent has been paid to the only landlord that the tenants have met, who is an agent of the landlord that filled out the tenancy agreement and to whom rent is paid. He is also the agent of the landlord who attended the last hearing.

The tenant testified that in January the tenant paid that agent \$1,265.00, and agrees that the landlord is owed \$200.00 for December. Also, \$6,201.79 was e-transferred on April 2, 2019.

On the second scheduled date of the hearing, the landlord advised that a Court Bailiff moved the tenants out of the rental unit on May 8, 2019.

Analysis

Firstly, I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon.

The record shows that the hearing on March 11, 2019 concerned an application made by the landlord for an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect because it would be unreasonable to wait for a notice to take effect. At that hearing, the parties agreed to settle the dispute, and the tenants agreed to move out by 1:00 p.m. on April 30, 2019, and acknowledged that rent was outstanding, so for the tenant to tell me that she has no idea what the Decision states is clearly not the case.

I have reviewed the utility bills, and I accept the testimony of the landlord's agent that rent and utilities from December, 2018 to April, 2019 remain outstanding, and I set out below the amounts due to the landlord:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
December 2018	Rent	\$1,400.00	\$1,200.00	\$200.00
December 2018	Gas bill	\$49.19		\$249.19
January 2019	Rent	\$1,400.00	\$557.71	\$1,091.48
January 2019	Gas bill	\$11.86		\$1,103.34
January 2019	Electric bill	\$44.85		\$1,148.19
February 2019	Rent	\$1,400.00		\$2,548.19
February 2019	Gas bill	\$136.06		\$2,684.25
February 2019	Electric bill	\$207.97		\$2,892.22
March 2019	Rent	\$1,400.00		\$4,292.22
March 2019	Gas bill	\$79.57		\$4,371.79
April 2019	Rent	\$1,400.00		\$5,771.79

The landlord is not able to provide any evidence with respect to utilities due for April, 2019, and I find that the landlord has established a monetary claim as against the tenants for unpaid rent and utilities in the amount of \$5,771.79.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of the tenancy. Given that the tenants only vacated on May 8, 2019, and the landlord's application was made on March 22, 2019, I find that the application for damages is premature, and I dismiss that portion of the landlord's application with leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in the amount of \$700.00. Having found that the tenants are indebted to the landlord for unpaid rent and utilities, I order the landlord to keep the security deposit in partial satisfaction of the claim, and I grant a

monetary order in favour of the landlord as against the tenants for the difference in the amount of \$5,171.79 ($\$5,771.79 + \$100.00 - \$700.00 = \$5,171.79$).

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby order the landlord to keep the \$700.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$5,171.79**. This order is final and binding and may be enforced.

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: May 09, 2019

Residential Tenancy Branch