



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

- a monetary order for other money owed by the tenants, including unpaid rent, pursuant to section 67; and
- authorization to recover the 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 1:51 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was 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 landlord and I were the only ones who had called into this teleconference.

The landlord provided sworn testimony and written evidence that they sent each of the two tenants a copy of the landlord's dispute resolution hearing package and written evidence by registered mail on March 29, 2019. The landlord supplied written evidence in the form of Canada Post Tracking Numbers and testified that both packages were returned to the landlord by Canada Post as unclaimed. I find that the tenants were deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on April 3, 2019, the fifth day after these registered mailings.

During the course of this hearing, the landlord clarified that their claim for \$3,050.00 in monies owed arising out of this tenancy had not included \$600.00, which the tenants had failed to pay for the remaining portion of November 2018. As the tenants clearly

understood that their failure to vacate the rental unit by the requested date of October 31, 2018, and until the beginning of December 2018, did not allow them to remain in the rental unit without paying for the last two weeks of November 2018, I allowed the landlord to increase the amount of the requested monetary award from \$3,050.00 to \$3,650.00.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, and other losses and money owed arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy began in 2011. By the end of this tenancy, the landlord stated that the monthly rent was set at \$1,200.00. Although the landlord has retained the tenants' security deposit on the basis of an agreement with the tenants, the landlord said that this agreement was by way of a text message in exchange for damage that the landlord claimed had occurred during the course of this tenancy.

The landlord entered undisputed sworn testimony and written evidence in the form of rent ledgers and email exchanges to support the claim that the tenants did not pay \$50.00 of their May 2018 rent, nor any rent for the months of September, October or November 2018, the last three months of their tenancy. The landlord said that the tenants vacated the rental property by December 1, 2018.

The landlord's revised claim for unpaid rent owing from this tenancy was as follows:

Item	Amount
Unpaid Rent Owing from May 2018	\$50.00
Unpaid Rent from September 2018	1,200.00
Unpaid Rent from October 2018	1,200.00
Unpaid Rent from November 2018	1,200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	\$3,650.00

Analysis

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. 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 find that there is undisputed evidence that the tenants did not pay \$50.00 of their May 2018 rent and any of their rent for the last three months of their tenancy, I allow the landlord's application for a monetary award totalling \$3,650.00.

Although the landlord's application does not seek to retain the tenants' security deposit and as the landlord still retains that deposit, using the offsetting provisions of section 72 of the *Act*, I authorize the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and other monies during this tenancy, and the filing fee for this application, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owing from May 2018	\$50.00
Unpaid Rent from September 2018	1,200.00

Unpaid Rent from October 2018	1,200.00
Unpaid Rent from November 2018	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,150.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: May 02, 2019

Residential Tenancy Branch