



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order in the amount of \$4,915.00 for damages to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenant's security deposit, and to recover the cost of the filing fee.

Landlord AG ("landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing and application were mailed to the tenant by registered mail on February 1, 2019, and that the mail was addressed to the tenant at the tenant's written forwarding address provided in evidence by email from the tenant. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the registered mail package was marked as "unclaimed" and was returned to the sender.

Based on the undisputed testimony before me and the registered mail tracking number provided which was confirmed by way of the online registered mail website information, I find the tenant was served with the Notice of Hearing, application and documentary evidence on February 6, 2019, which is five days after the registered mail package was

mailed to the tenant. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the tenant was sufficiently served in accordance with the *Act* and did not attend the hearing. Therefore, the hearing continued without the tenant present and as such, I consider this application to be unopposed by the tenant.

Preliminary and Procedural Matter

The landlord confirmed the email addresses of both parties at the outset of the hearing. Accordingly, the decision will be emailed to both parties at the email addresses confirmed during the hearing by the landlord. Any resulting monetary order, if any, will be sent the appropriate party by email for service on the other party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on June 1, 2016. During the tenancy monthly rent was \$1,295.00 per month originally, and was increased throughout the tenancy to the eventual amount of \$1,355.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$650.00, which the landlords continue to hold and has accrued no interest to date.

The landlords' monetary claim of \$4,915.00 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair beyond reasonable wear and tear	\$793.00
2. Compensation for time rental unit off of market due to tenant belongings left in house and the amount of work involved	\$375.00
3. Rent arrears (August \$1,129.00; November \$1,355.00;	\$3,747.00

December \$1,000.00; January \$263.00)	
TOTAL	\$4,915.00

Regarding item 1, the landlord testified that they are seeking \$793.00 to touch up damaged interior paint from the tenant sticking wall stickers to the interior walls causing damage. The landlord referred to both an incoming and outgoing Condition Inspection Report ("CIR") in support of this portion of their claim which indicates the interior walls were in good condition at the start of the tenancy and damaged at the end of the tenancy. The landlord also provided a receipt in the amount of \$793.00 as claimed for item 1.

Regarding item 2, the landlords have claimed \$375.00 for what the landlord testified was the tenant overholding the rental unit beyond the effective vacancy date of the 10 Day Notice that was effective January 7, 2019. The landlord testified that the tenant did not fully vacate the rental unit until January 15, 2019, so the amount of \$375.00 being claim represents January 7-15, 2019, inclusive being 9 days. The landlord stated that monthly rent of \$1,355.00 divided by 31 days is \$43.70, and that the amount claimed was less than \$43.70 x 9, which is \$393.30.

Regarding item 3, the landlords have claimed \$3,747.00 in loss of rent for August 2018 of \$1,129.00, November 2018 of \$1,355.00, December 2018 of \$1,000.00, and January 1-6, 2019 inclusive of \$263.00. For January 2019, the landlord clarified that they were seeking January 1-6, 2019, inclusive as the portion after January 6th, 2019 was being claimed in #2 above. The landlord confirmed that the tenant failed to pay any rent as claimed for this item and owes the landlord as a result.

The landlords are also seeking the recovery of the \$100.00 filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the maximum amount as indicated above of \$4,915.00

as I find the testimony and documentary evidence supports the landlords' claim and that the claim is reasonable. I am not applying Policy Guideline 40 for the useful lifespan of interior paint as I find the wall stickers are negligence and caused damage beyond reasonable wear and tear. I also find the amount claimed to be reasonable. I also find that the tenant breached section 37 of the *Act*, which requires the tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the tenant failed to leave the rental unit reasonably clean and damaged the areas claimed by the landlord beyond reasonable wear and tear.

Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$4,915.00** as claimed.

As the landlords' claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was successful. Based on the above, I find the landlord has established a total monetary claim of **\$5,015.00** comprised of \$4,915.00 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlords continue to hold the tenant's \$650.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlords to retain the tenant's full security deposit of \$650.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$4,365.00.

I caution the tenant to comply with section 37 of the *Act* in the future.

Conclusion

The landlords' application is fully successful.

The landlords have established a monetary claim of \$5,015.00 and have been authorized to retain the tenant's full security deposit of \$650.00 including \$0.00 in interest, in partial satisfaction of the landlords' monetary claim.

The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$4,365.00. The

landlords may enforce the monetary order in the Provincial Court (Small Claims Division).

The decision will be emailed to the landlords and sent by regular mail to the tenant.

The monetary order will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 3, 2019

Residential Tenancy Branch