



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRLS, MNDCLS, 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 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 pet damage deposit, and to recover the cost of the filing fee.

Landlord MJ ("landlord") and agent JC ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord and agent were 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 tenants 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 and agent testified that the Notice of Hearing and application were served on the tenants by registered mail with signature required on March 19, 2019 and one package for each tenant was addressed to the tenants at their address provided in their written forwarding address provided by the tenants via text received by the landlord on March 12, 2019. The registered mail tracking numbers have been included on the cover page of this decision for ease of reference.

According to the online registered mail tracking website the registered mail packages were signed for and accepted by the tenants on March 20, 2019. I find the tenants were served with the Notice of Hearing, application and documentary evidence on March 20, 2019, which is the date the tenants signed for and accepted the registered mail packages. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The agent confirmed the email addresses of the landlords during the hearing. The landlord and agent were advised that decision will be sent by email to the landlords and by regular mail to the tenants. In addition, any resulting monetary order will be sent to the landlords by email for service on the tenants.

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 tenants' security deposit and pet damage 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. A fixed-term tenancy began on October 1, 2017 and reverted to month to month after September 30, 2018. The agent testified that the tenants vacated the rental unit on March 15, 2019. During the tenancy monthly rent was \$1,400.00 per month and was due on the first day of each month. The monthly rent did not increase during the tenancy. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00, for a total of \$1,400.00 in combined deposits, which the landlords continue to hold.

The landlords are claiming a total of \$2,191.48, which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. March 2019 unpaid rent	\$1,400.00
2. Unpaid utilities	\$791.48
TOTAL	\$2,191.48

Regarding item 1, the agent testified that the tenants failed to pay March 2019 rent and failed to provide a written 1 Month Notice to End Tenancy. The agent stated that instead, the tenants sent a text to the landlords on February 26, 2019, which the landlord confirmed does is not a proper notice to end tenancy under the *Act*.

Regarding item 2, the tenancy agreement indicates that the tenants are required to pay 60% of heat and electricity utilities during the tenancy. I have summarized the evidence from the landlord and agents regarding the amount of \$791.48 being claimed against the tenants for unpaid utilities:

Date/Type of Utility	Amount of Invoice Provided	Tenants' 60% portion claimed	Amount paid by tenants to date
January 2019 gas bill	\$144.07	\$86.40	\$0.00
January 2019 electricity bill	\$394.14	\$236.48	\$0.00
February 2019 gas bill	Copy not provided	\$86.60	\$0.00
March 2019 gas bill	Copy not provided	\$66.78	\$0.00
March 2019 electricity bill	\$441.82	\$265.00	\$0.00

As noted above, the invoice for February and March 2019 gas bills were not submitted in evidence for my consideration.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what is reasonable to minimize the damage or losses that were incurred.

As I have accepted that the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlords' application is mostly successful, with the exception of the missing gas utility bills for the months of February and March of 2019, which were not submitted in evidence for my consideration. Therefore, I dismiss the February and March 2019 gas bills in the respective amounts claimed of \$86.60 and \$66.78 without leave to reapply, due to insufficient evidence as I find the landlord failed to satisfy me on the third ground for the test for damage or loss. The remainder of the landlords' claim I find has merit and is granted in full as follows:

Date/Type of Utility	Amount of Invoice Provided	Amount granted
January 2019 gas bill	\$144.07	\$86.40
January 2019 electricity bill	\$394.14	\$236.48
February 2019 gas bill	Copy not provided	Dismissed
March 2019 gas bill	Copy not provided	Dismissed
March 2019 electricity bill	\$441.82	\$265.00
TOTAL		\$587.88

Given the above and regarding item 2, I grant the landlords **\$587.88** as noted above for the unpaid utilities. I dismissed the remainder of the utilities due to insufficient evidence, without leave to reapply.

Regarding item 1, section 45 of the *Act* applies and states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

[Emphasis added]

In the matter before me, I find the tenants breached the *Act* twice by failing to provide notice to end the month to month tenancy before February 1, 2019, as monthly rent was due on the first day of each month. In addition, section 52 of the *Act* requires that notices be provided in writing, which I find the tenants failed to do as they simply sent a text to the landlords. Therefore, section 26 of the *Act* applies, which requires tenants to pay rent on the date that it is due in accordance with the tenancy agreement, which was March 1, 2019. Therefore, I find the tenants owe the landlords **\$1,400.00** for loss of March 2019 rent due to insufficient notice by the tenants.

As the landlords' claim had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Based on the above, I find the landlords have met the burden of proof in proving a monetary claim of **\$2,087.88** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid utilities	\$587.88
2. Unpaid March 2019 rent	\$1,400.00
3. Filing fee	\$100.00
TOTAL	\$2,087.88

As the landlords continue to hold the tenants' \$700.00 security deposit and \$700.00 pet damage deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlords to retain the tenants' full combined deposits of \$1,400.00, which have 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 tenants to the landlords in the amount of **\$687.88**.

I caution the tenants to comply with sections 26 and 45 of the *Act* in the future.

Conclusion

The landlords' application is mostly successful.

The landlords have been authorized to retain the tenants' full combined deposits of \$1,400.00 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 tenants to the landlords in the amount of \$687.88. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision and the monetary order will be emailed to the landlords. The decision will be sent to the tenants by regular mail as an email address was not provided for the tenants.

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: July 9, 2019

Residential Tenancy Branch