



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- auto retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

During the hearing, the landlord made a comment directed to the tenants which I found to be racist. I admonished the landlord and advised her that such comments were not permitted during the hearing.

Preliminary Matter: Name Correction

The tenants testified that the two of the tenants' names were incorrectly stated on the application. I herein amend the landlord's application to state to the correct name of the tenants, which are stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants rented a rural, off-the-grid property from the landlord from August 2018 to April 29, 2019. The property included a house in which the landlord maintained a separate living unit.

The tenancy agreement stated that the rent was \$1,200.00 per month and the tenants paid a monthly rent of \$1,200.00. However, the landlord claimed that the tenants actually owed \$1,800.00 per month in rent.

The tenants paid a \$600.00 security deposit.

The property also had a recreational vehicle pad where the tenants parked a recreational vehicle. The tenancy agreement stated that the "Tenants may reside in RV on the property during the lease." The landlord claimed that the recreational vehicle pad was not included in the tenancy agreement and that the tenants owed the an additional \$800.00 per month for rental of the recreational vehicle pad. The tenants claimed that the recreational vehicle pad was included in the monthly rent already paid

The landlord claims that the tenants owe the following compensation:

- unpaid rent of \$4,200, calculated based on the difference between the landlord's claimed rent of \$1,800.00 less the \$1,200.00 rent actually paid over seven months;
- propane utility expenses of \$150.00 for April 2019;

- recreational vehicle pad fees of \$5,600.00; calculated based on the difference between the landlord's claimed recreational vehicle pad fees rent of \$800.00 over seven months;
- firewood worth \$300 for half of cord of firewood that the landlord's claims that tenants took; and,
- compensation for harassment.

The tenants testified that they did not pay for propane in April 2019 because the landlord had disabled their gas access in April 2019.

The tenants testified that they did use some firewood but it was rotten and the landlord's significant other authorized them to use the firewood. The landlord testified that her significant other did not have the authority to give away her firewood.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will address each of the landlord's separately:

Unpaid rent

I find that the tenancy agreement states that the monthly rent is \$1,200.00 and the tenants paid the full \$1,200.00 for each month of the tenancy. Although the landlord argued that the rent should have been \$1,800.00, the landlord did not provide sufficient evidence to prove on the balance of probabilities that the tenants agreed to pay a rent of \$1,800.00 instead of the stated rent of \$1,200.00 in the tenancy agreement.

Furthermore, if the parties had agreed to increase the rent to \$1,800.00 as the landlord claims, I find that issue of the tenant's rent payment being deficient by \$600.00 each month would have arisen during the tenancy.

For the forgoing reasons, the landlord's request for a monetary order for unpaid rent is dismissed.

Propane

I find that the landlord has failed to provide sufficient evidence that the tenants owe the landlord compensation for unpaid propane expenses. I accept the landlord's uncontroverted evidence that there are \$150.00 of unpaid propane utility expenses from April 2019. However, the tenants provided uncontroverted testimony that the landlord denied the tenants access to the propane in April 2019.

Section 27 of the Act prohibits the termination of services and facilities which are essential to the tenant's use of the rental unit as living accommodation. I find that access to propane to an off-the-grid rental unit is an essential service and facility. By terminating the tenant's propane access, I find that the landlord has violated section 27 of the Act and in doing so I find that the landlord is not entitled to compensation for propane which the landlord improperly denied the tenants access to.

For the forgoing reasons, the landlord's request for a monetary order for propane utility expenses is dismissed.

Recreational vehicle

I find that the landlord has failed to provide sufficient evidence that the tenants owe the landlord compensation for recreational vehicle pad fees. The tenancy agreement specifically stated that the tenants may reside in a recreational vehicle on the property. The landlord did not provide sufficient evidence to establish that there was a different agreement between the parties to pay an additional recreational vehicle pad fees. For the foregoing reasons, the landlord's request for a monetary order for recreational vehicle pad fees is dismissed.

Firewood

I find that the landlord has failed to provide sufficient evidence that the tenants used it without her permission. The tenants provided uncontroverted testimony that the landlord's significant other authorized them to use the firewood. Although the landlord argued that her significant other did not have the authority to give away her firewood, I do not find this argument persuasive. I find that it is reasonable for the tenants to believe that the tenant's significant other did have the authority to give away the firewood. Furthermore, there was no evidence presented that the landlord objected to the tenants use of the firewood while the tenants were using it. As such, I find that it is reasonable for the tenants to rely on the ostensible authority of the landlord's significant other to act on the landlord's behalf.

For the foregoing reasons, the landlord's request for a monetary order for the firewood is dismissed.

Harassment

The landlord requested compensation for harassment from the tenants. However, the landlord did not refer to any specific provision in the Act, the regulations or the tenancy agreement that would entitle her to compensation for harassment. As such, I do not have a basis under section 67 of the Act to provide compensation for a claim of harassment so this claim is dismissed.

Filing fees

Since the landlord has not been successful in this matter, I dismiss the landlord's request for recovery of the \$100.00 filing fee pursuant to section 72 of the Act.

Security deposit

Since the landlord has not granted a monetary order against the tenants, I order that the landlord return the entire security of \$600.00 to the tenants pursuant to section 38 and I issue a monetary order to the tenants for this amount.

Conclusion

The landlord's application is dismissed in its entirety.

I grant the tenants a monetary order in the amount of **\$600.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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: July 28, 2019

Residential Tenancy Branch