



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:44 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord's representative and I were the only ones who had called into this teleconference.

The landlord's representative testified that all three tenants were individually served via registered mail, with the landlord's application for dispute resolution and evidence on May 17, 2019. The landlord entered into evidence tracking numbers to confirm these registered mailings. The tracking numbers are located on the cover page of this decision. I find that the tenants were deemed served with the landlord's application for dispute resolution on May 22, 2019, five days after their registered mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's representative, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's representative provided the following undisputed testimony. This tenancy began on November 1, 2017 and ended on May 1, 2019. Monthly rent in the amount of \$3,224.00 was payable on the first day of each month. A security deposit of \$1,550.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's representative testified that a joint move in condition inspection report was completed on October 15, 2017 and was signed by a representative of the landlord and tenant A.B. The landlord's representative testified that a move out condition inspection report was completed and signed by a representative of the landlord and tenant A.B. on May 1, 2019. The condition inspection reports were entered into evidence. Tenant A.B. signed that he agreed with the contents of the move in and move out condition inspection reports and agreed to the following deductions from the tenants' security deposit:

- Cleaning;
- Carpet cleaning; and
- Rubbish removal.

Tenant A.B. did not specify what amount of money he agreed the landlord could deduct for the above charges from his security deposit. Tenant A.B. provided his forwarding address in writing on the move out condition inspection report. The landlord applied for dispute resolution on May 15, 2019.

The landlord's representative testified that the tenants did not pay rent for April or May 2019 or provide one full month's notice to end tenancy. The landlord is seeking \$6,448.00 in unpaid rent. A tenant ledger supporting the above was entered into evidence.

The landlord's representative testified that the tenants' rent payments for the months of February, March, April and May 2019 were all returned for insufficient funds. Section 2.1 of the tenancy agreement states in part:

The Tenant shall also pay the Landlord an additional Twenty-five Dollars (\$25.00) for each cheque which is returned to the Landlord due to there being insufficient funds in the account of the Tenant to cover such cheque and the Tenant will also pay Twenty-five Dollars (\$25.00) for each rent cheque that is not delivered to the Landlord by the first of each and every month of this lease

The landlord's representative testified that the tenant owes the landlord \$25.00 for each instance the tenants' rent was returned due to insufficient funds. The landlord's application claims \$200.00; however, four instances at \$25.00 per instance totals \$100.00.

The ledger entered into evidence states that the tenant owes \$100.00 for the four insufficient fund charges at \$25.00 per instance as well as four charges for late fees and other charges for the months of February, March, April and May of 2019 at a rate of \$25.00 per instance. The landlord's representative did not provide testimony on the additional late charges.

The landlord's representative testified that the subject rental property was not cleaned when the tenants moved out. The condition inspection reports state that the subject rental property was dirtier when the tenants moved out than when they moved in. The landlord entered into evidence photographs of the subject rental property which showed that it needed cleaning. The landlord entered into evidence a cleaning invoice for the subject rental property in the amount of \$350.00 and is seeking that amount from the tenants.

The landlord's representative testified that the tenants did not have the carpet at the subject rental property cleaned at the end of the tenancy. The condition inspection reports state that the carpets were dirtier on move out than they were on move in. The landlord entered into evidence a carpet cleaning invoice in the amount of \$472.50 and is seeking this amount from the tenants.

The landlord's representative withdrew the landlord's claim for the cost of rubbish removal and the cost of light bulbs which totalled \$157.50.

The landlord's representative testified that hydro was not included in the rent. The tenancy agreement entered into evidence states same. The landlord entered into evidence a letter dated December 12, 2018 which was sent to the tenants requesting that they pay their outstanding hydro bill. The hydro bill with a reading date of November 15, 2018 was entered into evidence and states that \$274.46 is due. The landlord's representative testified that the normal practice was for the tenants to pay the landlord for their hydro bill but this was not done for this bill.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Unpaid Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$3,224.00 the first day of each month for the months of April and May

2019 which they failed to do. In accordance with section 26(1) of the *Act* I find that the tenants owe the landlord \$6,448.00 in unpaid rent.

NSF Charges and Late Fees

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution **or** for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. **(emphasis added)**

I find that the tenancy agreement states that the landlord is permitted to charge the tenant \$25.00 for rent payments returned due to insufficient funds. Pursuant to section 7(1)(d) of the *Regulation*, I find that the landlord is entitled recover \$100.00 for the four instances of insufficient funds. I find that the landlord is not entitled to charge a further \$25.00 per instance for late fees. The wording of section 7 of the *Regulation* does not allow the landlord to collect both the \$25.00 fee for insufficient funds and the \$25.00 late fee, it only allows the landlord to charge one of the fees.

Cleaning

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's representative's testimony and the condition inspection reports, I find that the rental unit required cleaning at the end of the tenancy. The landlord submitted into evidence a cleaning invoice in the amount of \$350.00. I find that the tenants are responsible for this cleaning fee.

Carpets

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the photographic evidence of the landlord, the landlord's representative's testimony and the condition inspection reports, I find that the tenants did not have the carpets cleaned when they moved out and that the carpets required cleaning.

The landlord submitted into evidence a carpet cleaning invoice in the amount of \$472.50. I find that the tenants are responsible for this cleaning fee.

Hydro

The tenancy agreement states that hydro is not included in the rent. Based on the landlord's representative's testimony and the tenant ledger, I find that the tenants did not pay the hydro bill with a reading date of November 15, 2018 in the amount of \$274.45. Pursuant to the tenancy agreement, I find that the tenants are responsible for this charge.

Rubbish Etc.

As the landlord's representative withdrew the landlord's claim for the cost of rubbish removal and light bulbs, I will not consider this portion of the landlord's claim.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$1,550.00 in part satisfaction of their monetary against the tenants.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
April and May 2019 rent	\$6,448.00
NSF charges	\$100.00
Cleaning	\$350.00
Carpet cleaning	\$472.50
Hydro	\$274.46
Filing Fee	\$100.00
Less security deposit	-\$1,550.00
TOTAL	\$6,194.96

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 27, 2019

Residential Tenancy Branch