



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, 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;
- To retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- 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. I find the parties were served in accordance with the *Act*.

The landlords stated that they did not receive the tenants' evidence. The tenants stated that they did serve the landlords with the tenants' evidence. However, the landlords waived any objection to the admission of the tenants' evidence. Accordingly, I admitted the tenants' evidence.

Issue(s) to be Decided

Are the landlords 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?

Are the landlords 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?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlords testified that the tenancy started on January 1, 2019 and it was a fixed term tenancy that expired on March 31, 2019. The tenants paid a \$800.00 security deposit.

The landlords testified that the tenants only paid \$800.00 rent for March 2019 and the tenants owed \$800.00. The landlords testified that they issued a notice to end tenancy for unpaid rent. The tenants filed two applications for dispute resolution requesting an order to cancel the notice to end tenancy and other relief. The hearing numbers for the tenants' applications are referenced on the first page of the decision.

In the previous hearing the tenants argued that they did not owe the landlords rent for March 2019 because the parties had an agreement that the rent would be reduced for March 2019. The tenants claimed that they agree to reduce the rent because the landlord interfered with the tenants' access to the rental unit in January 2019. The arbitrator in the previous matter decided that such an agreement did not exist and the landlords were issued an order of possession on April 16, 2019. The tenants moved out of the rental unit on April 20, 2019.

The landlords claimed overholding damages in April 2019 in the amount of \$150.00 per day. The landlords testified that this was the amount they had to pay to stay at a friend's property until the rental unit was vacated. The tenants argued that this expense of \$150.00 was not credible because the landlords did not provide details of this arrangement. Further, the tenants argued that they were not overholding in April 2019 because they were legitimately waiting for their Residential Tenancy Branch hearing.

The landlords also claimed expenses for litigation expenses including registered mail expenses, translation services, memory card expenses and time off work to prepare for and participate in Residential Tenancy Branch hearings.

The landlord also claimed reimbursement for utility statements. The landlords claimed that the water bill for the year was \$345.00 and the tenants are responsible for \$103.02 for the period of January 1, 2010 to April 20, 2019. The landlords also claimed that the tenants were responsible for a prorated portion of the internet bill of \$67.20 for April 1, 2019 to April 20, 2019 in the amount of \$44.80.

The landlords also claimed that the tenants were responsible for cleaning expenses because the property was not left in a clean condition. The landlords claimed that they had to spend \$252.50 to have the property professionally cleaned. The landlord also claimed \$10.00 for a broken light bulb cover. The tenants argued that they left the property in a clean condition and any damage was reasonable wear and tear.

The landlords also requested a reimbursement of a \$25.00 strata fine for moving out of the property without complying with strata rules. The tenants argued that the strata assessment was wrong and they were not actually moving out of the property at that time.

The tenants claimed that the landlords had denied the tenants access to rental unit, the landlords were responsible for the loss of \$400.00 from the rental unit and the landlords were responsible for harassing telephone calls. The landlords denied these allegations.

Analysis

The parties have requested monetary compensation on multiple grounds. I will address each claim separately.

i. Unpaid rent

Section 67 of the *Act* states that if a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results. I find that the tenants owed monthly rent in the amount of \$1,600.00 pursuant to the tenancy agreement. Based upon the landlord's testimony, I find that the tenants only paid \$800.00 for March 2019, leaving \$800.00 in unpaid rent.

The tenants argued that there was an agreement to reduce the rent because of an issue that occurred in January 2019. However, the arbitrator in the previous hearing determined that there was no agreement to reduce the rent and the doctrine of res

judicata prevents the tenants from raising an issue that was already decided in a previous hearing.

Accordingly, I find that the tenants owe \$800.00 in unpaid rent for March 2019 and the landlord is entitled to a monetary award of \$800.00 for unpaid rent in March 2019 pursuant to section 67 of the *Act*.

ii. Overholding damages

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, the tenant ended pursuant to the notice to end tenancy issued in March 2019. However, I am satisfied from the testimony of the parties that the tenants occupied the rental unit until April 20, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit from April 1, 2019 until April 20, 2019, I find that the landlords are entitled to overholding rent in the amount of \$1,066.66 (twenty days at the per diem rate of \$53.33) for April 2019. Although the landlords claimed a daily fee of \$150.00 for overholding damages based on his claimed rental costs for short-term housing, the amount of damages that a landlord is entitled to is based on the per diem rent of the rental unit pursuant to *Residential Tenancy Policy Guideline #3*.

Accordingly, I grant the landlords monetary compensation in the amount of \$1,066.66 for overholding damages.

iii. Litigation expenses

Litigation expenses, other than recovery of the filing fee, are not compensable under the *Act*. Accordingly, the landlords' request for compensation for expenses including registered mail expenses, translation services, memory card expenses and time off

work to prepare for and participate in Residential Tenancy Branch hearings are dismissed.

iv. Utility expenses

The landlords presented utility invoices for water and internet fees relating to the time that the tenants were in occupation of the rental unit. The water utility fees and the internet fees were not included in the tenancy agreement. Accordingly, I find that the tenants owe the landlords reimbursement of the utility fees relating to the times in which the tenants were possession of the rental unit pursuant to section 67 of the *Act*. I accept the landlords' undisputed testimony that that are responsible \$103.02 for the water utility bill for the period of January 1, 2010 to April 20, 2019 and \$44.80 for the internet bill for April 1, 2019 to April 20, 2019.

Accordingly, I grant the landlords an order for monetary compensation in the amount fo \$147.82 (\$103.02 plus \$44.80) for reimbursement of utility fees.

v. Cleaning expenses

I am not satisfied that the landlords have sustained any damages for cleaning expenses. I find that the photographs and the condition inspection report on move out submitted by the landlords do not show a need for significant cleaning services. The tenants are only required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*. I find that the rental unit was left in a reasonably clean condition.

Accordingly, I dismiss the landlords' request for a monetary award for cleaning expenses.

vi. Strata fine

I find that the tenants did move out of the rental unit in a manner that violated strata rules and I find that the tenants are responsible for the \$25.00 strata fine incurred by this conduct. I do not find the tenants' explanation that they were moving something into the building to be credible. The photographs show the tenants removing large quantities of items consisted with a move out. I grant the landlords a monetary order of \$25.00 for reimbursement of the strata fine.

vii. Claims by tenants

The tenants made a request for a monetary claim against the landlords at the hearing. However, the tenants have not filed an application for dispute resolution or a cross-application to the landlord's application. Accordingly, the tenants' request for compensation is denied. The tenants do however have liberty to file an application for dispute resolution against the landlords in the future. However, this decision does not extend the deadlines or limitation periods for any such potential claims.

viii. Filing fees

Since the landlords have generally prevailed in this matter, the landlord is granted an order for reimbursement of their filing fee pursuant to section 72 of Act.

ix. Security deposit

I find that the landlords hold a \$800.00 security deposit from the tenants. Section 72 of the *Act* states that if tenants are ordered to pay any amount to the landlords, the security deposit may be deducted from that amount pursuant to section 72 of the *Act*. Accordingly, the landlord will be permitted to retain the security deposit and the sum of \$800.00 will be deducted from the damages awarded to the landlords herein.

Accordingly, I grant the landlords a monetary award in the amount of **\$1,338.66**, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent for March 2019	\$800.00
Overholding damages for April 2019	\$1,066.66
Utilities	\$147.82
Strata fine	\$25.00
Filing fee	\$100.00
Less: Security deposit	-\$800.00
Total	\$1,338.66

Conclusion

The landlord is permitted to retain the security deposit. I grant the landlords a monetary order in the amount of **\$1,338.66**. If the tenant fails to comply with this order, the

landlord 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: August 14, 2019

Residential Tenancy Branch