



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The two landlords (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords confirmed that the tenant was served with the landlords' application for dispute resolution hearing package on May 31, 2019, by way of registered mail to the forwarding address provided by the tenant on May 12, 2019. The landlords provided a copy of a letter, dated May 12, 2019, from the tenant with this address. The landlords provided a Canada Post receipt with this application and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on June 5, 2019, five days after its registered mailing to the forwarding address provided by the tenant.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage to the rental unit?
Are the landlords entitled to retain the tenants' deposits?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and testimony, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The male landlord testified regarding the following facts. This tenancy began on August 1, 2017 and ended on May 12, 2019. Monthly rent in the amount of \$1,610.00 was payable on the first day of each month. A security deposit of \$775.00 and a pet damage deposit of \$775.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed by both parties for this tenancy. The landlords obtained written permission from the tenant on the move-out condition inspection report on May 12, 2019, to keep both of the tenants' deposits. The landlords filed this application to retain the deposits on May 25, 2019.

The landlords seek a monetary order of \$3,172.65 plus the \$100.00 application filing fee.

The landlords seek unpaid rent of \$1,610.00 for May 2019. The female landlord stated that the tenant vacated the rental unit pursuant to a notice to end tenancy for unpaid rent, effective on May 12, 2019. She said that he did not pay the rent and the landlords are entitled to the full month of rent. The male landlord claimed that re-rental advertisements were posted right away, several people came to view the rental unit, and it was re-rented for June 1, 2019.

The female landlord stated that the tenant caused damages to the floors and wall gouges and he did not clean the rental unit before vacating. She stated that there were scratches on the walls and doors from the tenant's dog, that 80% of the light bulbs were not functioning, the new carpets were not cleaned when the tenant moved out, and the tenant smoked inside the rental unit causing damages to the blinds that could not be cleaned due to the build up. She said that the unit had to be repainted and cleaned extensively and that the landlords bought the supplies and did the repairs themselves.

The landlords seek \$51.64, \$125.37, \$6.81 and \$20.99 for the blinds, light bulbs, and weather stripping that was chewed by the tenant's dog around the front door. They seek \$152.67 for the paint and \$13.88 for the painting supplies. They seek \$36.94 to replace the deck tiles from cigarette burns and \$154.35 for carpet cleaning. The landlords provided receipts and invoices for the above damages and repairs and confirmed that they were all paid by them. The landlords provided a copy of a move-out condition inspection report, signed by the tenant, noting these damages, and the tenant agreeing to same. The landlords provided photographs showing the damages.

Analysis

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$1,610.00 for May 2019. The tenant vacated the rental unit on May 12, 2019 and the landlords were unable to rent the unit until June 1, 2019. Accordingly, I find that the landlords are entitled to rent of \$1,610.00 for May 2019.

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$562.65 total for the various repairs and damages in the rental unit. I award \$51.64, \$125.37, \$6.81 and \$20.99 for the blinds, light bulbs, and weather stripping around the front door. I award \$152.67 for the paint and \$13.88 for the painting supplies. I award \$36.94 to replace the deck tiles and \$154.35 for the carpet cleaning. The landlords provided receipts and invoices for the above damages and repairs and confirmed that they were all paid by them. The landlords provided a copy of a move-out condition inspection report, signed by the tenant, noting these damages, and the tenant agreeing to same. The landlords provided photographs showing the damages.

I award the landlords \$625.00 total of the \$1,000.00 claimed for their personal labour to clean and paint the rental unit. I find that the landlords are entitled to a rate of \$25.00 per hour for the 25 total hours of labour. I find that \$25.00 is a more reasonable rate than the \$40.00 claimed by the landlords, who did not provide documentary proof of where they obtained this \$40.00 rate.

As the landlords was mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's deposits. Over the period of this tenancy no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain both the tenant's security and pet damage deposits, totaling \$1,550.00, in partial satisfaction of the monetary award. I issue a monetary order to the landlords for the balance owing of \$1,347.65.

Conclusion

I order the landlords to retain both the tenant's security and pet damage deposits, totaling \$1,550.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$1,347.65 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: September 06, 2019

Residential Tenancy Branch