



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY & PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-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 and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord's agents W.L. and J.K. (herein referred to as "the landlord") attended at the date and time set for the hearing of this matter and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:53 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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 and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenant was served with the landlord's notice of this hearing and evidence by Canada Post registered mail on July 15, 2019, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord testified that the tenant

provided the landlord with their forwarding address by email on July 2, 2019, and as such the landlord sent the notice of hearing package to the tenant's forwarding address.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was served with the notice of this hearing and the landlord's evidence on July 20, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, and the landlord confirmed the following information pertaining to this tenancy:

- This fixed-term tenancy began April 7, 2019 with a scheduled end date of April 30, 2019. The rental unit consisted of an approximately 10,000 square foot home.
- Monthly rent of \$12,300.00 was payable on the first of the month.

- The tenant paid a security deposit of \$6,150.00, which continues to be held by the landlord.
- The landlord testified that the parties conducted a move-in condition inspection at the beginning of the tenancy, but the tenant abandoned the rental unit at the end of the tenancy and therefore a move-out condition inspection was not conducted.

The landlord testified that the tenant failed to pay rent went due on June 1, 2019 and as such the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on June 6, 2019. The tenant did not dispute the notice and vacated the rental unit on June 28, 2019. As such the landlord is seeking \$12,300.00 for unpaid rent for the month of June 2019.

The landlord is also seeking a late fee charge of \$35.00, however, I note that the tenancy agreement does not provide any recourse for the landlord for a late fee of \$35.00. The tenancy agreement only provides the landlord with the option to charge a \$35.00 NSF charge in the event a service charge is incurred as the result of insufficient funds fee.

The landlord testified that the tenants provided their forwarding address by email on July 2, 2019.

The landlord filed an Application for Dispute Resolution on July 8, 2019, seeking to retain the tenants' security deposit against the claim for unpaid rent for June 2019, and a claim for compensation of \$600.00 for garbage removal and cleaning costs.

In support of their claim, the landlord submitted into evidence a rent ledger; copy of the 10 Day Notice; a receipt for garbage removal and cleaning costs, and photographic evidence of the condition of the rental unit at move-out.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The

amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for unpaid rent and cleaning and junk removal costs. I have addressed my findings on each of these heads of claim.

1) Unpaid Rent

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenants to pay \$12,300.00 in monthly rent. As such, based on the testimony and evidence before me, on a balance of probabilities, I accept the sworn testimony of the landlord that the tenants failed to pay rent for the month of June 2019.

Therefore, I find the landlord is entitled to a monetary award of \$12,300.00 for unpaid rent owed by the tenants. I decline the landlord's claim for a late rent fee of \$35.00 as the tenancy agreement only allows for a charge due to NSF cheque fee, not a late rent fee.

2) Cleaning and Junk Removal Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the photographic evidence and receipts submitted by the landlord in support of their claim, I find that there is sufficient evidence that the tenants caused left behind garbage that required removal and failed to leave the rental unit reasonably clean. As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the claimant has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party.

Therefore, I find the landlord is entitled to a monetary award of \$600.00 for the claimed cost of cleaning and garbage removal.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$12,900.00. I find that the landlord submitted an Application for Dispute Resolution in accordance with the requirements of section 38 of the *Act* to retain the tenant's security deposit in partial satisfaction of their claim for compensation.

The landlord continues to retain the tenant's \$6,150.00 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$12,900.00, against the tenant's security deposit of \$6,150.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$6,850.00.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$12,900.00
Recovery of the filing fee from the tenants	\$100.00
LESS: Security deposit held by landlord	(\$6,150.00)
Total Monetary Order in Favour of Landlord	\$6,850.00

Conclusion

I order the landlord to retain the \$6,150.00 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation for unpaid rent and cleaning and garbage removal costs.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$6,850.00 in full satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and 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: November 4, 2019

Residential Tenancy Branch