



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL; MNSD, FFT

Introduction

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

- a monetary order for unpaid utilities and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of her security deposit and the regular return of her keys deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The two landlords, "landlord ML" and landlord SC ("landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 59 minutes.

The landlord confirmed that she had permission to speak on behalf of landlord ML at this hearing (collectively "landlords"). Landlord ML did not testify, as the landlord claimed that she was sick.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid utilities and for damage to the rental unit?

Are the landlords entitled to retain the tenant's security deposit?

Is the tenant entitled to the return of double the amount of her security deposit and the regular return of her keys deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 26, 2018 and ended on September 30, 2019. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. 50% of the total utilities was payable by the tenant to the landlords. A security deposit of \$600.00 and a keys deposit of \$50.00 were paid by the tenant and the landlords continue to retain both deposits in full. A written tenancy agreement was signed by both parties. A forwarding address was provided by the tenant to the landlords by way of a letter sent by registered mail on October 4, 2019 and received by the landlords on October 8, 2019. The landlords did not have written permission to keep any amount from the tenant's security deposit. The landlords filed their application to retain the tenant's security deposit on October 15, 2019.

Both parties agreed that a move-in condition inspection report was completed. The tenant said that she did not get a copy of the move-in report, while the landlord said that she gave the tenant a copy in person on May 26, 2018. Both parties agreed that a move-out condition inspection report was completed with only the landlord present, not the tenant. The landlord said that she gave the tenant a number of move-out inspection dates between October 5 and 13, 2019 but she had new tenants moving in, so she could only meet later on October 13, 2019. The tenant said that the landlord only gave her October 13 and 15, 2019 as possible move-out inspection dates, including on an RTB form Notice of Final Opportunity to Schedule a Condition Inspection ("NFO"). She

said that she was out of town and unable to meet on those dates, but the landlord refused to provide any other dates.

The landlords seek a monetary order of \$527.08 including the \$100.00 application filing fee. Prior to the hearing, the landlords filed an amendment to reduce their original monetary claim from \$888.15 to \$528.22. At the hearing, the landlord further reduced the landlords' monetary claim from \$528.22 to \$527.08. The tenant disputes the landlords' entire application.

The landlords seek \$50.27 total for unpaid gas and hydro utilities from July 27 to September 30, 2019. The tenant agrees with the above calculation but disputes that she owes it to the landlords, saying that there were three families living at the rental property, not two families like before, so she should not have to pay half the utilities, only 1/3. She claimed that she paid the 1/3 amount to the landlords, after asking the landlords to do so, and not receiving a response. The landlord claimed that there was no such agreement for the tenant to pay 1/3 and it had always been half the total amount.

The landlords seek \$340.00 for cleaning, repairing the nail holes, repairing the scuff marks, and painting, due to damages caused by the tenant at the rental unit. The landlords provided an estimate for the above amount. The landlord said that she only had half the work done on October 13, 2019 and she paid the contractor \$170.00 but she did not submit the cheque, the cancelled cheque, her bank statement, or a receipt for same. She maintained that new tenants moved in as of October 14, 2019 and they are divorced and planning to move out, so she will complete the other half of the work when they move out. The tenant disputes that she caused any damages, stating that she submitted photographs and videos of the good condition of the rental unit when she vacated, as well as a witness statement from a witness who was present during the move-out. She said that the landlords advertised the rental unit as newly renovated before they rented it out to new tenants because there were no damages, but the landlords only claimed damages after the tenant asked for her security deposit back from the landlords.

The landlords seek \$36.36 for mailing documents to the tenant for this hearing, including the NFO, the landlords' application package, and the landlords' amendment to their application.

The tenant seeks a monetary order of \$1,250.00 and the \$100.00 application filing fee. The tenant seeks the return of double the amount of her security deposit of \$600.00, totalling \$1,200.00. The tenant also seeks the return of her keys deposit of \$50.00. The landlords dispute the tenant's application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant 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 respondent 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlords \$50.72 for unpaid hydro and gas utilities. The landlords provided copies of the hydro and gas bills. The tenant agreed that the calculation above was correct. Both parties agreed that the tenant was required to pay 50% of hydro and gas utilities to the landlords. The written tenancy agreement provided as evidence for this hearing indicates that the tenant was required to pay 50% of the hydro and gas utilities and that this was not included in the monthly rent of \$1,200.00. The tenant signed the tenancy agreement and initialed this specific page. The tenant attempted to unilaterally change the payment from 50% to 1/3 without the consent of the landlords and failed to pay the remaining amount. Therefore, I find that the tenant is responsible for this cost.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application, without leave to reapply.

I dismiss the landlords' claim for mailing hearing-related documents to the tenant of \$36.36. As noted to both parties during the hearing, the only hearing-related costs allowable under section 72 of the *Act*, are for filing fees.

I dismiss the landlords' claim for cleaning and repairing damages of \$340.00. The landlords did not provide any proof of payment, that half the work was done for \$170.00 and paid to the contractor. The landlords did not provide a receipt, bank statement, cancelled cheque or other such proof of payment, which the landlord said she had in her possession. The landlords had ample time to provide these documents from the time they filed her application on October 15, 2019 to the hearing date of February 25, 2020, a time period of over four months. The landlords only provided an unpaid estimate. The landlord claimed that she was going to have the rest of the work done after the new tenants move out, which has not yet happened, but did not indicate what damage is attributable to the tenant and what damage is attributable to the new tenants, who have been living there since October 14, 2019.

I accept the tenant's testimony and evidence that she cleaned the rental unit and there were no damages beyond reasonable wear and tear. I also accept the tenant's witness letter, from a witness who was present with the tenant upon move-out, that the rental unit was clean and there were no damages when the tenant moved out. The landlord did not dispute this letter during the hearing.

Since the landlords were mainly successful in their application, I find that they are not entitled to recover their \$100.00 filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on September 30, 2019. The tenant provided a written forwarding address to the landlords on October 4, 2019 by way of a letter sent by registered mail and received by the landlords on October 8, 2019. The tenant did not give the landlords written permission to retain any amount from her security deposit. The landlords did not return

the deposit to the tenant. The landlords filed their application on October 15, 2019, within 15 days after the later forwarding address receipt date of October 8, 2019.

The landlords' right to claim against the deposit for damages is extinguished, for failure to provide sufficient evidence that they gave a move-in condition inspection report copy to the tenant in person, contrary to section 24(2)(c) of the *Act*. However, the landlords also applied for unpaid utilities and other costs, aside from damages.

No interest is payable on the tenant's security deposit during the period of this tenancy. I find that the tenant is only entitled to receive the regular return of her security deposit of \$600.00.

I find that the tenant is entitled to the return of her keys deposit of \$50.00. The landlord confirmed that she still had the tenants' key deposit of \$50.00. The landlord did not indicate that the tenant failed to return her keys at the end of the tenancy or that there was an issue with the keys when they were returned.

As the tenant was mainly successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

I order the landlords to retain \$50.72 from the tenant's security deposit of \$600.00, in full satisfaction of the monetary award made to the landlords for unpaid utilities.

I issue a monetary order in the tenant's favour in the amount of \$699.28 against the landlord(s).

Conclusion

I order the landlords to retain \$50.72 from the tenant's security deposit of \$600.00.

I issue a monetary order in the tenant's favour in the amount of \$699.28 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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: February 25, 2020

Residential Tenancy Branch