



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, MNR-S, FF

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;
- authorization 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 from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Express Parcel Service with a signature component on June 5, 2019. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via Express Parcel Service with a signature component on August 21, 2019. The tenants have argued that the hearing cannot proceed as the landlord's evidence was served late and that the tenants have not been given an opportunity to respond by submitting rebuttal evidence in the form of additional message communications between the two parties. The landlord argued that the tenants vacated the rental unit without providing a forwarding address in writing until approximately 2 weeks before the scheduled hearing. The tenants argued that the rebuttal evidence is critical to responding to the landlord's application. Discussions with both parties over a 20 minute period has resulted in the landlord's monetary application. I find that as this is a monetary issue that there is no prejudice to the landlord in adjourning the hearing to allow the tenants an opportunity to submit rebuttal evidence. The hearing is adjourned. Both parties were cautioned that no additional evidence is to be submitted except for the tenants' submittal of rebuttal

evidence in the form of communications between the two parties. Both parties were notified that a notice of an adjourned hearing letter would be sent to the confirmed addresses noted on the landlord's application. The tenants provided a new mailing address for receipt of the adjournment notice and a copy of the interim decision.

On November 5, 2019 hearing resumed with both parties. Both parties confirmed the tenants served the landlord with an additional evidence submission via Canada Post Registered Mail on September 11, 2019 and that the tenants provided the Canada Post Registered Mail Tracking Number as confirmation. The tenants also stated that the package was delivered and signed for on September 20, 2019.

The hearing resumed with both parties and was adjourned due to a lack of time at 12:15pm. Both parties were cautioned that no additional evidence is to be submitted. Both parties confirmed their mailing addresses and were notified that a notice of an adjourned hearing letter would be sent to the confirmed addresses noted on the landlord's application.

The tenants stated that the landlord was served with the submitted rebuttal evidence.

On March 31, 2020, the hearing was resumed via conference call with both parties.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, money owed or compensation and unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet damage deposits?

Background and Evidence

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

This tenancy began on September 15, 2018 on a fixed term tenancy ending on September 15, 2019 as per the submitted copy of the signed tenancy agreement dated September 5, 2019. The monthly rent was \$1,700.00 payable on the 1st day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid on September 15, 2018.

The landlord seeks a monetary claim of \$11,543.04 which consists of:

\$284.09	Municipal Utility Bill, Q1 2019
\$249.95	Municipal Utility Bill, Q2 2019
\$1,700.00	Rental Income, May 2019
\$25.00	Late Fee, December 2018
\$25.00	Late Fee, April 2019
\$25.00	Late Fee, May 2019
\$200.00	Loss of Wages, May 30, 2019
\$6,800.00	Loss of Rental Income, June to September 2019, 4 months
\$60.00	Water Absorbers
\$25.00	Dump Fee, \$20/hr + \$5 Fee
\$160.00	8 hours at \$20/hr (two people)
\$120.00	6 hours at \$20/hr
\$40.00	2 hours at \$20/hr
\$240.00	12 hours at \$20/hr (two people)
\$80.00	4 hours at \$20/hr (two people)
\$244.27	Municipal Utility Bill, Q3 2019
\$200.00	Loss of Wages, Hearing September 5, 2019
\$100.00	Filing Fee

The landlord claims that the tenant vacated the rental unit leaving it dirty and damaged, with unpaid rent (lost rental income), unpaid utilities and unpaid late rent fees.

The landlords claim that the tenants failed to pay items #1, #2 and #16, municipal utility bills for Q1, Q2 and Q3 2019 as noted above. The tenants dispute these claims arguing that they are only responsible for usage and not upgrades to the system. The tenants argue that garbage/recycling is included in the tenancy agreement; water meter removal; infrastructure base; and sewer base. The landlord referred to section 29 of the signed tenancy agreement, Utilities and Other Charges, which states, "The tenant is responsible for the payment of all utilities in relation to the Property. This includes, sewer, water, power, cable, internet and phone." The landlord further argues that the signed RTB tenancy agreement shows that no utilities are included. The landlord provided evidence that the tenants' claims that the municipal utilities were for upgrades were false. The landlord stated that all costs were for usage costs as shown in the submitted invoices.

The landlord claims that the tenants failed to pay rent for May 2019 of \$1,700.00. The tenants confirmed that rent was not paid and argued that the landlord had refused to accept payment of rent. The landlord stated that the tenants were repeatedly late paying rent for December 2018, April 2019 and May 2019. The landlord stated as part

of the signed tenancy agreement, the tenants are subject to a \$25.00 fee for each late payment. The tenants argued that the December payment was made via emailed etransfer on December 1, 2018 and confirmed that the other two payments were late. The landlord argued that the emailed etransfer was not received from the tenant until December 3, 2018 as shown in the submitted copy of the email from the tenant.

The landlord seeks claims of \$400.00 for loss of wages on May 30, 2019 and September 5, 2019 for days off of work to deal with the tenancy. Both parties were advised that loss of wages are considered part of litigation costs and Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs are dismissed.

The landlord seeks compensation of \$6,800.00 for loss of rental income for the period June to September 2019 (4 months@ \$1700/month). The landlord claims that the rental unit was not rentable during the 4 month period due to smoking damage and garbage left by the tenants. The landlord has submitted 15 photographs in conjunction with a completed condition inspection report for the move-in completed on September 15, 2018 for comparison. The landlord stated that the cleaning and removal of items were performed by the landlord himself based upon his own work availability. The tenants disputed the landlord's claims arguing that no garbage was left by the tenants and that there was no smoke damage. No evidence of smoke damage was provided.

The landlord seeks \$60.00 for the cost of water absorbers used to control the humidity in the rental that was found to be excessive due to a water leak. The tenants dispute this claim arguing that the humidity from the water leak issue was due to the landlord's negligence after the tenant reported the issue to the landlord, but that the landlord failed to act. The tenants referred to a text message from the landlord's plumber that action would have to be decided upon by the landlord. The tenant did not provide the text message. The landlord argued that the plumber called was for a slow drain and was unrelated to the landlord's claim for humidity control with the water absorbers.

The landlord seeks \$25.00 for dump fees related to removal of all of the items left by the tenant at the end of tenancy. The landlord seeks \$20.00 for labour and the \$5.00 dump fee incurred. The tenant argues that the dump fee was specified for 50kg (100 lbs.) and that no furniture could have been part of this dump fee. The landlord confirmed that the items dumped were not furniture, but instead was garbage left by the tenants

throughout the rental property that had to be removed. The landlord referred to the 25 photographs which show the garbage left about the property by the tenant.

The landlord seeks compensation for a total of 20 hours of cleaning by the landlord at \$20.00 per hour for a total of \$400.00. The landlord relies upon the submitted 25 photographs of the rental unit at the end of tenancy and the provided detailed breakdown of 2 people cleaning at \$20.00 per hour for:

- 4 hours on June 23
- 6 hours on June 24
- 2 hours on June 24
- 6 hours on June 30
- 2 hours on July 20

The tenants dispute this claim arguing that the photographs submitted by the landlord were taken before the tenancy had ended and prior to the tenants moving out. The tenants stated that several of the items in the photographs were taken and are currently in the possession of the tenants. The tenants also argued that the house was cleaned thoroughly by the tenants before moving out. The tenants claimed that there were photographs submitted showing that the house was clean at the end of tenancy, but was unable to reference any of the photographs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants regarding the condition of the rental unit at the end of tenancy and the unpaid utilities. I find that the landlord provided clear and un-ambiguous testimony and documentary evidence for each of his

claims, whereas the tenants disputed the claims and argued repeatedly that the landlord's issues were related to a water leak in the foundation of the property.

The landlord provided a completed condition inspection report for the move-in in comparison with photographs submitted of the condition of the rental unit at the end of tenancy. Although the tenants argued that these photographs were taken prior to the move-out and the tenant's removal of items and cleaning performed, the tenants failed to provide sufficient evidence of any cleaning prior to moving out. The landlord also provided a copy of the signed tenancy agreement, invoices, receipts and detailed accounting of cleaning and the submission of photographs showing the condition of the rental unit at the end of tenancy. On this basis, I find that the landlord has established a claim for:

\$284.09	Municipal Utility Bill, Q1 2019
\$249.95	Municipal Utility Bill, Q2 2019
\$1,700.00	Rental Income, May 2019
\$25.00	Late Fee, December 2018
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\$244.27	Municipal Utility Bill, Q3 2019
\$100.00	Filing Fee
\$3,318.31	Total

The exception is for:

\$6,800.00	Loss of Rental Income, June to September 2019, 4 months
\$60.00	Water Absorbers

On these two items, I find that the landlord has failed to provide sufficient evidence to establish a claim. On the landlord's claim for \$6,800.00 for loss of rental income (June to September a 4 month period), the landlord stated that he was unable to re-rent the unit as the landlord had taken 4 months to clean the unit and due to smoke damage. I

note that the landlord's detailed cleaning is only for the period June 23 to July 20 for the 20 hours spent cleaning. No other details were provided on why the unit was not able to be re-rented in a timely manner. No details of actual smoke damage or repairs were provided. On this basis, I find that the landlord suffered only a loss of rental income for 1 month of June for \$1,700.00 in lost rent.

The landlord's claim for water absorbers of \$60.00 has also failed. The landlord claimed that the use of these absorbers was for humidity control. The landlord argued that the excessive humidity in the rental unit was caused by the tenants. This claim was disputed by the tenants who argued that there were repeated water issues since 2018 that were reported to the landlord to address. The landlord was unable to provide sufficient supporting evidence that the humidity in the rental unit was caused by the tenants. On this basis, this part of the landlord's claim was dismissed.

The landlord has established a total monetary claim of \$5,018.31. I authorize the landlord to retain the \$850.00 security and the \$850.00 pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$3,318.31.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: April 14, 2020

Residential Tenancy Branch