



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, 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 losses pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants were assisted by their advocate.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The parties agree on the following facts. This fixed-term tenancy began on December 1, 2018. Monthly rent was \$1,630.00 payable on the first of each month. A security deposit of \$850.00 was paid at the start of the tenancy and is still held by the landlord.

No condition inspection report was prepared at anytime for this tenancy. The tenancy ended November 30, 2019. The tenants had paid rent through October, 2019 but failed to make any payment for November. The tenants provided a forwarding address to the landlord prior to the end of the tenancy in their notice to end tenancy dated October 24, 2019. The tenants have not given written authorization that the landlord may retain any portion of the deposit.

The tenants submit that an email correspondence dated July 15, 2019 should be construed as a notice to end tenancy issued pursuant to section 49 of the Act as the landlord states that they will be needing the rental unit at the end of the fixed-term. The tenants say that they withheld the rent for November 2019 as they believed the correspondence was an effective notice under the Act. The landlord submits that the tenants were not authorized to deduct from their rent and seek a monetary award in the amount of \$1,630.00 the full amount of the rent for November 2019.

The landlord submits that when they inspected the rental unit they found the need for some work to be done to the yard and to replace keys which were not returned by the tenants. The landlord submits receipts for the work and says that the total costs incurred is \$102.64.

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.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenancy ended November 30, 2019 and the landlords filed their amendment to their claim seeking authorization to retain the security deposit on

December 6, 2019. As such, I find that the landlord met their statutory obligation to file an application within 15 days.

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

I do not find the tenants’ submission that the email correspondence of July 15, 2019 is a notice to end tenancy for landlord’s use of property pursuant to section 49 of the *Act* to be at all persuasive. The correspondence plainly does not meet the form and content requirements of section 52 of the *Act* as it is not signed, does not provide the address under discussion nor is it in the prescribed form. It is evident that the tenant was well aware of the deficiencies of the email to end the tenancy as there is subsequent correspondence where the tenant states that the landlord has not provided proper notice to end the tenancy. Furthermore, the tenants issued their own written notice to end the tenancy dated October 24, 2019.

I find that there is insufficient evidence that the landlord issued any notice to end this tenancy. Pursuant to the *Act*, when the fixed-term tenancy ended November 30, 2019 it would have simply become a month-to-month tenancy. As I find that no notice under section 49 was issued by the landlords I find that there was no statutory foundation to allow the tenants to withhold the rent for the month of November, 2019.

I find that the tenants were obligated to pay the full rent for November, 2019 in the amount of \$1,630.00. I accept the evidence of the parties that the tenant failed to do so and that there is a rental arrear in that amount. Accordingly, I issue a monetary award in the landlord’s favour in that amount.

I accept the landlord’s evidence that the rental property required work after the tenants had vacated. While no condition inspection report was prepared for this tenancy the landlord provided sufficient evidence in the form of invoices for work done and multiple photographs showing the condition of the suite. Based on the preponderance of evidence, I accept that the landlord incurred some costs as a result of the tenancy and I find that there is sufficient evidence that the monetary amount of their losses is \$102.64. As such, I issue a monetary award in the landlord’s favour in that amount.

As the landlords were successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit of \$850.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$982.64 on the following terms:

Item	Amount
Unpaid Rent November 2019	\$1,630.00
Costs of Repairs and Cleaning	\$102.64
Filing Fees	\$100.00
Less Security Deposit	-\$850.00
TOTAL	\$982.64

The tenants must be served with this Order as soon as possible. Should the tenants 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: April 23, 2020

Residential Tenancy Branch