



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlords' 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 their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package via Canada Post Registered Mail on November 22, 2019. The landlords stated that the tenants were served with only the 1st out of the 4 documentary evidence packages via Canada Post Registered Mail on March 11, 2020. The landlords stated that the second package was a duplicate, the 3rd and 4th packages were not served to the tenants. The tenants argued that no documentary evidence has been served by the landlords for the hearing. The landlords provided direct testimony of the Canada Post Customer Receipt Tracking number as confirmation. Both parties consented to the Arbitrator reviewing the Canada Post online tracking system. A review of the online tracking system shows that the package was received by Canada Post on March 11, 2020 and signed in receipt on March 16, 2020. The signature on receipt is "Jonathon Covid-19". The tenant, J.P. argued that he was not in town on March 16, 2020 when the package was delivered as he is staying out of the city. Extensive discussions took place in which the tenants acknowledged that although they do not have copies of the landlord's evidence, that the hearing could proceed in its absence. The tenants

confirmed that they had no issues in proceeding without the landlords documents. On this basis, I find that the tenants are deemed served as per section 90 of the Act. Although the tenants stated that there were no issues in proceeding, I advised all parties that if during the hearing, the details of any evidence referred to by the landlords would be described in detail to the tenants. The tenants stated that the landlords were served with their submitted documentary evidence via Canada Post Registered Mail on March 24, 2020. The landlords confirmed receipt of a 24 page package consisting of a typed letter, screenshots of text messages, screenshots of emails and 2 photographs, but that 9 pages were missing. Both parties confirmed that the missing pages were of 4 pages of prospective new tenant applications and a receipt for carpet cleaning. The tenants argued that these missing documents were part of the served package, but that the landlord is unable to provide any supporting evidence of service of the missing documents. The tenants argued that these documents are crucial in responding to the landlords' monetary claims. The landlords argued that the missing evidence should be excluded from consideration. I find in the circumstances that the tenants missing evidence is crucial to their defence of the landlords' claims. I find that an adjournment is necessary to facilitate the tenants' serving copies of the missing 9 pages (4 pages of new rental applications and a 1 page receipt for carpet cleaning). I find that as this is a monetary matter that there is no bias to either party. The hearing is adjourned to allow the tenants to serve the landlords with the missing evidence. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted. Both parties were notified that with this interim decision would be a new notice of an adjournment hearing detailing the new date and time with the appropriate access codes for the next conference call hearing.

On May 29, 2020 the hearing resumed with both parties present via conference call. Both parties stated that they were prepared to proceed with the hearing.

Both parties confirmed the tenants served the landlords with the 9 missing pages of evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage, for money owed or compensation and recovery of the filing fee?
Are the landlords entitled to retain all or part of the security deposit?

Background, Evidence, Analysis and Conclusion

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 April 2, 2018 on a fixed term tenancy ending on April 30, 2022 as per the submitted copy of the signed tenancy agreement dated April 4, 2018. The monthly rent was \$2,950.00 payable on the 1st day of each month. A security deposit of \$1,475.00 and a pet damage deposit of \$1,475.00 were paid.

The landlord seeks a monetary claim of \$16,140.00 which consists of:

\$2,700.00	Unpaid Rent,
\$8,200.00	Estimated Damage, flooring/landscaping
\$5,140.00	Estimated Damage, Walls, doors, storage and cleaning

The landlords claim that the tenants vacated the rental unit leaving it damaged and dirty requiring cleaning and repairs. The landlords claim that because of the repairs the rental unit was not able to be re-rented in a timely manner. The landlords also claimed that the rental was re-rented separately and that the basement portion remains un-rented.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The tenants agreed to forfeit any claim on the \$1,475.00 security deposit and the \$1,475.00 pet damage deposits. The landlords will retain these two combined deposits.

The landlords agreed to withdraw the Application for Dispute

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from this application for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

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: May 29, 2020

Residential Tenancy Branch