



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlords filed an Application for Dispute Resolution on February 15, 2020 seeking an order to recover the money for unpaid rent and utilities, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on April 23, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlords attended the telephone conference all hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlords made reasonable attempts to serve the tenants with this Notice of Dispute Resolution Proceeding. This means the landlords must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

In the hearing the landlords stated that they used Canada Post registered mail to send the Notice of Hearing to the tenants. This package included the evidence the landlord presents in this hearing. One package to one of the tenants was sent a second time due to missing mail. They provided a Canada Post registered mail tracking number for each tenant involved – this information appears in the landlord’s evidence.

The landlords also stated they gave all documents in the evidence package to the tenants on April 14th, 2020. One of the landlords confirmed meeting one of the tenants before this hearing, and the tenant referred to forwarding money before “this court thing”, meaning the hearing itself.

I accept the landlord’s undisputed evidence that the package was sent to each tenant via registered mail, and hand delivered to each tenant in advance of the hearing date. Based on

the submissions of the landlord, I accept they served notice of this hearing and the landlord's application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. the tenancy agreement between the parties was signed on June 26, 2019. The monthly rental amount was \$1,290.00, payable on the first of each month. A security deposit and pet deposit were paid on the day after the signing, for \$645.00 each. The tenancy started on August 1, 2019, when the tenants moved in.

The agreement contains the clause that tenants are to pay one third of utilities bills, gas, water, electrical and garbage.

The landlords provided a copy of a letter addressed to them by the tenants. This was to give notice that they had an "inability to pay rent for the remainder of [their] lease." They stated they would pay rent for January and then vacate the suite by February 1, 2020.

The landlords responded with a letter dated January 11, 2020. They informed the tenants that new tenants will move in on February 1, 2020. They requested the late rent payment of \$1,290.00 for January 2020, the corresponding "NSF" fee of \$50, and utilities cost at \$205.92. This is a total amount of \$1,545.92.

On the Application filed February 15, 2020, the landlords stated their total claim was for \$1,399.62. This is unpaid rent and utilities. They wish to retain the security and pet deposit amounts that total \$1,290.00 as payment back toward this amount owing.

The 'Monetary Order Worksheet' was signed by the landlords on April 22, 2020. This is one day before the scheduled hearing on April 23, 2020. There was no amended application prior to the hearing to adjust the amounts as originally claimed in February. The amount on this worksheet is \$1,576.79.

This worksheet sets out the amounts for each of the utilities and rent.

- January 2020 on this worksheet is now \$645, and this indicates that it is 'rent still owing'
- Unpaid bills total \$595.31
- NSF bounced cheques total \$150.00
- A water filter cost is \$59.31
- Registered mail fees \$27.17
- Application for Dispute Resolution filing fee \$100.00

The landlord provided the receipts showing the worksheet amounts for utilities. The receipts within show dates from summer 2019 through to the beginning of February 2020.

Analysis

The Residential Tenancy Branch Rules of Procedure provide the stated objective of the entire dispute resolution procedure. This is to "ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants." Rule 4 gives the process for amending a claim. The Applicant may so amend their application by submitting the required form and ensure service to the respondents as soon as possible and no less than 14 days before the hearing.

While the rules provide for an amendment in the hearing, typically this is a scenario involving the respondents who can attend and speak to the matter directly.

In this instance, the landlords filed a monetary order worksheet that differs in amounts from their original claimed amount. This includes added items: a fridge water filter, NSF fees, and mailing fees. I do not allow for extra items to enter the claimed amount where the total monetary order claim differs from that originally sought at the time of application in February. This worksheet was submitted the day prior to the scheduled hearing. The amended monetary amount was not served upon the tenants who are granted the opportunity to speak to the

amounts and details therein. The utilities receipts pre-date the hearing application; therefore, I include these amounts in my equation.

The worksheet notes one-half months' rent, so deducted. Accounting for the extra amounts, this adds \$236.48. I subtract this amount from the worksheet total for the following reasons:

- The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail is not recoverable;
- The refrigerator filter was not originally claimed and an agreement for reimbursement was not provided by the tenant in writing;
- An initial NSF fee of \$50 was identified to the tenant in the January 11 letter – subsequent NSF fees (adding \$100) were not disclosed to the tenant prior to the hearing. I deduct \$100 for this reason.

Following this deduction, the amount I allow for compensation, subtracted from the worksheet amount, is \$1,290.31.

The landlord submitted the dialogue between the two parties concerning the end of the tenancy. I find this is a mutual agreement to end the tenancy permitted under section 44(1)(c) of the *Act*.

Although the way both parties ended the tenancy is permissible under the *Act*, the non-payment of rent and utilities is a breach of the tenancy agreement. The landlords' loss results from this breach; therefore, compensation to the landlord is in order.

The landlords have properly made a claim against the security and pet deposits and have the right to do so. The landlord is holding the amount of \$1,290.00. I order this amount deducted from the recovery of the rent amount and utilities of \$1,290.31. This is an application of section 72(2)(b) of the *Act*.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.31 for the remainder of reimbursement and recovery of the filing fee for this hearing 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 *Act*.

Dated: May 12, 2020

Residential Tenancy Branch