



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Unpaid rent;
- Compensation for damage to the rental unit;
- Authorization to withhold all or a portion of the Tenants’ security or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and an agent for the Landlord (the “Agent”). No one appeared on behalf of the Tenants. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Tenants, I confirmed service of these documents as explained below.

The Landlord testified that after failed attempts to serve the Tenants at the rental unit by registered mail, they sent each of the Tenants their own copy of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the documentary evidence before me, by email on March 2, 2020, and again on March 27, 2020. The Landlord stated that the Tenants provided their email addresses in the addendum to the tenancy agreement for the purpose of being served, and that there was a history of communicating with the Tenants by email at these email

addresses. In support of this testimony the Landlord pointed to section 3 of the addendum to the tenancy agreement in the documentary evidence before me, screen shots showing that the emails and attachments were sent to the Tenants by email on March 2, 2020, and March 27, 2020, as described by the Landlord, and copies of several recent e-mails between themselves and the Tenants.

Based on the above, I am satisfied that the Tenants provided their email addresses to the Landlord for the purpose of being served, that the Landlord sent each of the Tenants a copy of the aforementioned Notice of Dispute Resolution Proceeding Package at the email addresses provided by them for the purpose of being served, and that the parties have routinely used these email addresses to communicate with one another regarding tenancy matters. As a result, I find that each of the Tenants were sufficiently served with the Notice of Dispute Resolution Proceeding Package on March 5, 2020, and again on March 30, 2020, three days after the emails were sent to them, in accordance with section 71 (2) (a) and & 71 (2) (b) of the *Act* and the Director's Order dated March 30, 2020.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application and emailed to their Agent at the email address provided in the hearing.

Preliminary Matters

During the hearing the Landlord stated that they had submitted documentary evidence for my consideration showing service of the Notice of Dispute Resolution Proceeding Packages on the Tenants by email and proof of routine email correspondence at the email addresses used for tenancy matters.

I was unable to locate these documents in the documentary evidence before me, so I requested that the Landlord submit them through the online Dispute Resolution System during the hearing for my consideration. Section 75 of the *Act* states that the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding.

Further to this, rule 3.17 of the Rules of Procedure states that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established under the Rules of Procedure, provided that the acceptance of this evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

As I am satisfied by the addendum to the tenancy agreement that the Tenants provided their email addresses to the Landlord for the purpose of being served, I find that the acceptance of proof of service via these email addresses does not unreasonably prejudice the Tenants or result in a breach of the principles of natural justice. Further to this, I find that records relating to proof of service of the Notice of Dispute Resolution Proceeding Packages on the Tenants is necessary, appropriate, and relevant to the dispute resolution proceeding. As a result, I accepted this documentary evidence for consideration.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to withhold all or a portion of the Tenants' security or pet damage deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy began on October 1, 2019, and that rent in the amount of \$2,050.00 is due on the first day of each month. The Landlord confirmed that the Tenants paid a \$1,025.00 security deposit, which the Landlord still holds. The Landlord also stated that a condition inspection and report were completed in compliance with the *Act* and regulations at the start of the tenancy.

The Landlord stated that the Tenants moved out of the rental unit without giving notice, and that the Landlord did not become aware that the Tenants had moved out until sometime in March 2020. The Landlord stated that the Tenants:

- Owe \$2,050.00 a month in unpaid rent for February and March of 2020;
- Failed to clean the rental unit at the end of the tenancy as required, resulting in \$189.00 in cleaning costs;
- Stole a mini-fridge from the rental unit worth \$201.60;
- Damaged the rental unit necessitating \$1,575.00 in costs to remove garbage, repair and repaint walls, and replace lightbulbs;
- Incurred a \$200.00 strata fine which remains unpaid; and
- Caused damage to a door and frame with a quoted repair cost of \$2,867.81.

The Landlord acknowledged that a move-out condition inspection was not completed with the Tenants at the end of the tenancy, as the Tenants moved out without notice, but stated that one was completed by their Agent in the absence of the Tenants in compliance with the *Act* and regulations. The landlord stated that the Tenants have also not provided a forwarding address in writing.

In support of their testimony the Landlord submitted documentary evidence including bank records, emails, a police report, photographs of the rental unit, condition inspection reports, notice of a bylaw fine, a Notice of Final Opportunity to Schedule a Condition Inspection, a copy of the tenancy agreement and addendum, quotes and invoices, and a Monetary Order Worksheet.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that the party who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

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

Based on the undisputed testimony and documentary evidence of the Landlord, I am satisfied that the Tenants owe \$4,100.00 in outstanding rent and that the Landlord acted reasonably to minimize this loss. As a result, I find that the Landlord is entitled to \$4,100.00 for unpaid rent.

Section 37 (2) of the *Act* states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the undisputed documentary evidence and testimony before me, I am satisfied that the Tenants failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, at the end of the tenancy, that the Landlord therefore suffered a monetary loss and/or depreciation in value of the rental unit in the amount of \$4,833.41, and that the Landlord acted reasonably to minimize this loss. I am also satisfied that the Tenants owe \$200.00 for a strata fine. As a result, I find that the Landlord is entitled to \$5,033.41 in compensation for damage to the rental unit, cleaning costs, a stolen mini-fridge, and recovery of a strata fine.

Pursuant to section 72 of the *Act*, I find that the Landlord is entitled to recovery of the \$100.00 filing fee.

Based on the undisputed testimony and documentary evidence before me, I am also satisfied that the Landlord has not extinguished their right to withhold or claim against the Tenants' security deposit under sections 24 or 36 or the *Act* and that they filed their Application in compliance with section 38 (1) of the *Act*. As a result, I find that the Landlord is entitled to retain the full \$1,025.00 security deposit held by them in partial repayment of the above owed amounts.

Pursuant to section 67 of the *Act*, the Landlord is also entitled to a Monetary Order in the amount of \$8,208.41: \$9,233.41 owed for unpaid rent, damage, cleaning costs, and other monetary loss, as well as recovery of the filing fee, less the \$1,025.00 security deposit retained.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$8,208.41. The Landlord is provided with this Order in the above terms and 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: May 12, 2020

Residential Tenancy Branch