



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPN, OPR, MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"):

- An order of possession pursuant to section 55;
- a Monetary Order for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain the deposits for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 15 minutes. The landlords were represented by their agent (the "landlord") who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that each of the tenants was personally served with the application and evidence on April 1, 2020. Based on the undisputed evidence of the landlord I find that each tenant was served with the materials in accordance with sections 88 and 89 of the Act on that date.

At the outset of the hearing the landlord said that the tenants have vacated the rental unit and withdrew the portion of their application seeking an Order of Possession.

The landlord made an application requesting to amend the monetary amount of their claim. The landlords indicated that since the application was filed they have mitigated some of their losses while some initial estimates of damage became more accurate due to receiving updated invoices. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of

the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$9,112.50 to \$9,399.93 as the cost of damage and repairs becoming more accurate upon receiving receipts could be reasonably anticipated.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

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

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

Background and Evidence

This fixed-term tenancy began in November 2019. Monthly rent was \$2,135.00 payable on the first of each month. A security deposit of \$1,062.50 and pet damage deposit of \$500.00 were collected at the start of the tenancy and are still held by the landlord. The written tenancy agreement provides that a late fee of \$25.00 is charged for any rent payments that are not made by the first of the month. The agreement also provides that the tenants are liable for the costs of re-renting the suite.

The tenants failed to pay rent for the month of March and April 2020. The tenants gave written notice to end the tenancy by a letter dated March 13, 2020. The tenants vacated the rental suite sometime in March, 2020. The landlord testified that they were able to mitigate their rental income losses by finding a new occupant for the rental suite for mid-April 2020. The landlord seeks a monetary award in the amount of \$3,227.50 for the rental arrear and late fees for this tenancy. The landlord submits that they incurred costs for listing and re-renting the suite in the amount of \$1,067.50.

The landlord submits that the rental unit was left in a state of considerable disarray and they incurred significant costs for repairs, cleaning and disposing of garbage left on the premises. The landlord submitted into evidence photographs of the condition of the suite as well as invoices and receipts received for the cost of work done. The total amount of the cost of work is \$5,104.93.

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.

I accept the evidence of the landlord that the tenants failed to pay rent in accordance with the tenancy agreement. I accept the evidence of the landlords by way of their ledger and testimony that the total arrears for this tenancy is \$3,227.50. I accept the evidence of the landlord that they took reasonable measures to mitigate their rental income losses. Accordingly, I issue a monetary award in this amount in the landlords' favour.

I accept the evidence that the tenants are responsible for payment of reasonable costs to re-rent the property. I accept the evidence of the landlord that the costs incurred is \$1,067.50. I accept the evidence that the landlord took reasonable measures through advertising, interviewing candidates and showing the suite. I therefore issue a monetary award in this amount.

The landlord has established on a balance of probabilities that they have incurred costs to clean the rental suite due to the tenants. I accept the documentary evidence including photographs of the condition of the suite that the damage was extensive and beyond what would be expected from general wear and tear. The evidence of the landlord demonstrates that there were holes and markings on the walls, the floors were considerably dirty and that furniture and garbage was left on the premises requiring the landlord to dispose of quite a bit of debris. I accept the landlord's evidence that the total cost of the work done was \$5,109.93 and issue a monetary award 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 landlord to retain the tenant's security and pet damage deposit 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 \$7,942.43 on the following terms:

Item	Amount
Unpaid Rent and Late Fee	\$3,227.50
Cost of Re-Renting	\$1,067.50
Cleaning and Repair Costs	\$5,109.93
Filing Fee	\$100.00
Less Security Deposit	-\$1,062.50
Less Pet Damage Deposit	-\$500.00
Total Monetary Order	\$7,942.43

The landlords are provided with the 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 the 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: May 19, 2020

Residential Tenancy Branch