



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL-S FFL

### **Introduction**

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

- 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;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,968.02 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 pm in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that each tenant personally with the notice of dispute resolution form and evidence when he conducted the move-out condition inspection on February 4, 2020. I find that the tenants was served with this package on February 4, 2020, in accordance with section 88 and 89 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$3,968.02;
- 2) recover their filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2019. Monthly rent is \$1,238.20 (not including utilities) and is payable on the first of each month. Tenant CA was a party to a prior tenancy agreement with the landlord, but the occupants of the rental unit changed (CA's son moved out and tenants BB and RT moved in), and the parties entered into a new tenancy agreement in acknowledgement that the BB and RT became tenants.

In August 2015, when he first moved into the rental unit, Tenant CA paid the landlord a security deposit of \$560. The landlord testified that on February 4, 2020, after the move-out condition inspection report, the tenants agreed that the landlord could keep the security deposit in partial satisfaction of the cost to repair damages to the rental unit done by the tenants (I note that the landlord has not claimed for any such damages in this application).

The landlord testified that the tenants failed to pay any rent for November or December 2019, or January 2020. In total, he testified they are \$3,714.60 in arrears.

The landlord testified that the electrical utilities were provided by the municipality and were in the tenant's name. He testified that the tenants failed to pay the balance of their utility account when they moved out (in the amount of \$153.42). He entered a brief statement of account for the utilities dated January 29, 2020 which shows this balance.

The testified that in mid-to-late February 2020, he attended the municipalities' offices to close the tenant's utilities account and pay the balance. He testified that he paid the balance because, as the owner of the rental unit, he would have been charged for the unpaid balance when his property taxes were assessed.

The landlord also testified that the strata bylaws of the residential property in which the rental unit is located requires that an owner or tenant pay the strata corporation a non-refundable move out fee of \$100. The landlord testified that the tenants failed to pay this amount to the strata. He submitted a resolution from the strata corporation supporting this testimony.

The landlord testified that the tenants signed a Form K: Notice of Tenant's Responsibilities at the start of the tenancy which obligates the tenants to comply with the strata bylaws and pay and penalties and fines issued by the strata council. He did not enter a copy of the Form K into evidence.

In summary, the landlord claims \$3,968.02 in compensation, representing the following:

Rental arrears	\$3,714.60
Unpaid utilities	\$153.42
Move out fee	\$100.00
<b>Total</b>	<b>\$3,968.02</b>

## **Analysis**

I found the landlord to be credible witness; his testimony was forthright & believable and accorded with the documents submitted into evidence. In light of any evidence to contrary, and despite some of his testimony not being corroborated by documentary evidence, I accept the undisputed testimony of the landlord in its entirety.

Section 26 of the Act states

### **Rules about payment and non-payment of rent**

**26(1)** 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 find that, in breach of section 26 and of the tenancy agreement, the tenants failed to pay any rent for the months of November 2019, December 2019, and January 2020. Accordingly, I find that their rental arrears are \$3,714.60. I order that they pay the landlord this amount.

The terms of the tenancy agreement do not require the landlord pay for the rental unit's utilities. Accordingly, the tenants are responsible for paying their own utilities bills. I find that they failed to do this, and that an unpaid balance of \$153.42 remained at the end of the tenancy. I accept the landlord's testimony that, if this amount remained unpaid, he would have been bill the amount as part of his municipal taxes. Arrangements such as this are the norm when a municipality provides utilities to a rental unit.

I find that by not paying their outstanding utility balance, the tenants breached the tenancy agreement. I find that the landlord suffered loss as a result of this breach by paying the tenants' outstanding utility balance of \$153.42. Accordingly, I order the tenants to pay the landlord this amount.

Despite it not being submitted into evidence, I accept the landlord's testimony that the tenants signed a Form K at the start of the tenancy and agreed to comply with the strata bylaws. Upon reviewing the strata corporation resolution, I find that the tenants are obliged to pay a \$100 move-out fee to the strata corporation. I accept the landlord's testimony that they did not pay this amount.

Section 7(1)(f) of the *Residential Tenancy Regulation* permits a landlord to charge a tenant for a non-refundable move-in or move-out fee charged by a strata corporation to the landlord.

Accordingly, I find that the tenants must pay the landlord \$100 in satisfaction of the unpaid move-out fee.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover their filing fee from the tenants.

Subsequent to the landlord making this application, the parties agreed the landlord could retain the security deposit in partial satisfaction of the cost of repairing damage to the rental unit caused by the tenants. As such, the security deposit can no longer be applied to the monetary orders set out above.

### **Conclusion**

Pursuant to sections 67, and 72 of the Act, I order that the tenants pay the landlord \$4,068.02, representing the following:

Rental arrears	\$3,714.60
Unpaid utilities	\$153.42
Move out fee	\$100.00
Filing fee	\$100.00
<b>Total</b>	<b>\$4,068.02</b>

The landlord must serve a copy of this decision and attached monetary order on the tenants as soon as reasonably possible.

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: June 22, 2020

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Residential Tenancy Branch