



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on March 6, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was assisted by K.B. M.A. attended the hearing on behalf of the Tenants who are jointly and severally liable under the tenancy agreement. All in attendance provided affirmed testimony.

On behalf of the Landlord, K.B. testified the Notice of Dispute Resolution Proceeding package was served on the Tenants by email on June 9, 2020. K.B. testified these documents were served on the Tenants using email addresses that were used for communication during the tenancy. K.B. testified that M.A. called the Landlord on June 10, 2020 to discuss. M.A. acknowledged receipt and expressed a willingness to proceed with the hearing despite suggesting he didn't have time to submit evidence in response. No further issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms that a fixed-term tenancy began on February 1, 2019 and ended on January 31, 2020. Thereafter, the tenancy continued on a month-to-month basis until the Tenants vacated the rental unit on or about March 4, 2020. M.A. testified that J.R. vacated the rental unit before him. During the tenancy, rent in the amount of \$1,600.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00, which the Landlord holds.

The Application discloses a claim for \$3,956.43, which is particularized in a Monetary Order Worksheet dated March 6, 2020.

First, the Landlord claimed \$198.45 for cleaning, which M.A. agreed to pay.

Second, the Landlord claimed \$39.98 to replace an entry lock and a mailbox lock. The amount claimed was based on a Home Depot receipt for \$19.98 and the Landlord's estimate of \$20.00 based on a purchase of \$12.25 USD.

In reply, M.A. disagreed with this aspect of the claim. However, he acknowledged that he changed the locks during the tenancy but that keys were left behind.

Third, the Landlord claimed \$118.00 for junk removal. The claim was supported by a receipt in the amount of \$120.00 and photographs depicting a bed mattress topped with rumpled sheets and a computer monitor, and a chair.

In reply, M.A. testified that the bed was loaned to him but belonged to the Landlord, and suggested the amount claimed was excessive.

Fourth, the Landlord claimed \$200.00 to change the locks and patch a hole in the wall. The claim was supported by a receipt in the amount of \$210.00.

In reply, M.A. testified that he agreed with the cost to repair the hole which was caused by his son. However, M.A. disputed the claim to replace the locks despite his acknowledgment that locks were changed during the tenancy.

Fifth, the Landlord claimed \$300.00 for furniture removed at the end of the tenancy. The Landlord testified that a number of items were loaned to the Tenants, including a table and chairs, a television, and a futon. The Landlord referred to images depicting these items being removed at the end of the tenancy.

In reply, M.A. testified that the items were given to the Tenants with no conditions attached for their return.

Sixth, the Landlord claimed \$1,600.00 for rent due on March 1, 2020. The Landlord testified he received only verbal notice of the Tenants' intention to vacate the rental unit on March 1, 2020. As noted above, the Tenants vacated the rental unit on March 4, 2020.

In reply, M.A. testified that he should not have to pay rent due March 1, 2020 because the relationship had continued to deteriorate since mid-January 2020. M.A. also raised issues regarding noise from the rental unit above.

Seventh, the Landlord claimed \$600.00 for outstanding rent from August 2019, which M.A. agreed to pay.

Finally, the Landlord claims \$100.00 in recovery of the filing fee, and requests an order permitting her to retain the security deposit held in partial satisfaction of the claim.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$198.45 for cleaning, M.A. agreed to pay this amount. The Landlord is granted a monetary award in the amount of \$198.45.

With respect to the Landlord's claim for \$39.98 to replace an entry lock and a mailbox lock, I find the Landlord has demonstrated an entitlement to recover some of the amount claimed. M.A. acknowledged changing the locks during the tenancy, contrary to section 31(2) of the *Act*. As the cost in USD was not converted to CDN, I am not satisfied the Landlord is entitled to \$20.00. However, although the Landlord did not provide a calculation of the currency conversion, I find it reasonable to award the

Landlord \$15.00 for the mailbox lock pursuant to section 62(3) of the *Act*. The Landlord is granted a monetary award in the amount of \$34.98.

With respect to the Landlord's claim for \$118.00 for junk removal, I find there is sufficient evidence before me to grant the relief sought. The claim was supported by a receipt in the amount of \$120.00 and photographs depicting a bed mattress, a computer monitor, and a chair left in the rental unit. I do not accept the testimony of M.A. who testified the bed was loaned to the Tenants (and was left behind) but that the other furniture items were given to the Tenants unconditionally. The Landlord is granted a monetary award in the amount of \$118.00.

With respect to the Landlord's claim for \$200.00 to change the locks and patch a hole in the wall, I find the Landlord is entitled to the relief sought. As noted above, I have found the locks were changed contrary to section 31(2) of the *Act*, and M.A. testified that he agreed with the cost to repair the hole. The landlord is granted a monetary award in the amount of \$200.00.

With respect to the Landlord's claim for \$300.00 for furniture removed at the end of the tenancy, I find there is sufficient evidence before me to grant the relief sought. Although M.A. testified the items were given to him this was denied by the Landlord. I was referred to no evidence to indicate the Landlord gave these items to the Tenants. The Landlord's claim was supported by images depicting furniture items being removed. I do not accept the testimony of M.A. who testified the bed was loaned to the Tenants (and was left behind) but that these items were given to the Tenants unconditionally. I find the amount claimed to be reasonable for the furniture items depicted. The Landlord is granted a monetary award in the amount of \$300.00.

With respect to the Landlord's claim for \$1,600.00 for rent due on March 1, 2020, I find there is sufficient evidence before me to grant the relief sought. Section 26 of the *Act* confirms a tenant must pay rent when due 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. Further, section 45 of the *Act* permits a tenant to end a periodic tenancy by giving written notice. The parties agreed that M.A. gave verbal notice on March 1, 2020, which is not notice at all. In addition, I find the reasons given by M.A. did not give rise to a right under the *Act* to deduct rent. The Landlord is granted a monetary award in the amount of 41,600.00 for unpaid rent.

With respect to the Landlord's claim for \$600.00 for outstanding rent from August 2019, M.A. agreed to pay this amount. The Landlord is granted a monetary award in the amount of \$600.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,351.43, which has been calculated as follows:

| Claim | Allowed |
|-------------------------------|-------------------|
| Cleaning: | \$198.45 |
| Lock replacement: | \$34.98 |
| Junk removal: | \$118.00 |
| Locks and wall repair: | \$200.00 |
| Furniture removed: | \$300.00 |
| Unpaid rent (March 1, 2020): | \$1,600.00 |
| Unpaid rent (August 2019): | \$600.00 |
| Filing fee: | \$100.00 |
| <i>LESS</i> security deposit: | (\$800.00) |
| TOTAL: | \$2,351.43 |

Conclusion

The Landlord is granted a monetary order in the amount of \$2,351.43. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 14, 2020

Residential Tenancy Branch