



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find each party duly served with the materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord testified that the tenant has made some payments towards the arrears and the amount of their monetary claim as at the date of the hearing is \$650.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of a claim decreasing with partial payments is reasonably foreseeable and does not prejudice the parties I amend the landlord's application to decrease their monetary claim from \$1,134.88 to \$650.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The monthly rent for this tenancy was \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was collected and is still held by the landlord. The rent does not include utilities which are payable directly to the municipality but charged to the landlord if unpaid.

The parties agree that the tenant failed to pay the full rent for the month of March, 2020 and that there is a rental arrear of \$400.00 as at the date of the hearing. The parties also agree that there is a utility arrear of \$250.00 as at the date of the hearing.

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 undisputed evidence of the parties that rent for this tenancy was \$1,300.00 and that the tenant is also responsible for paying utilities under the tenancy agreement. I accept the agreed upon evidence of the parties that there is a total arrear of \$650.00 for rent and unpaid utilities as at the date of the hearing. Accordingly, as I am satisfied that the landlord has established their loss arising due to a breach on the part of the tenant, I issue a monetary award in the landlord's favour in the amount of \$650.00.

I find that this application for dispute resolution has merit. As the landlord's application was successful the landlord is also entitled to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$650.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The landlord is authorized to retain the full \$650.00 security deposit for this tenancy.

I issue a monetary order in the landlord's favour in the amount of \$100.00 allowing the landlord to recover their filing fee from the tenant. 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 *Residential Tenancy Act*.

Dated: August 7, 2020

Residential Tenancy Branch