



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:

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

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by email sent on April 14, 2020 to an email address provided by the tenant to correspond regarding tenancy matters from an email address used by the landlord for such correspondence. Pursuant to an order of the Director of the Branch dated March 30, 2020, documents described in sections 88 and 89 of the *Act* were permitted to be served by email. Therefore, I find that the tenant is deemed served with the landlord's materials on April 17, 2020, three days after emailing in accordance with section 71 of the *Act* and the Director's Order of March 30, 2020.

During the hearing the landlord sought to amend the amount of their monetary claim by adding a claim for damages and loss arising from cleaning of the rental suite. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I find that the cost of cleaning and repairs is articulated in the body of the application and I find no prejudice to the tenant to amend the monetary claim. Accordingly, I allow the landlord to increase their monetary claim by \$448.00 to \$2,998.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in July 2019. Monthly rent was \$850.00 payable on the first of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant vacated the rental unit on May 3, 2020 having failed to pay any amount for rent since March, 2020. As of the date of the hearing the arrear for this tenancy is \$2,550.00.

No condition inspection report was prepared at anytime for this tenancy. The landlord submits that the rental unit required some cleaning and work to be done and the total cost of the work is \$448.00. The landlord submitted into evidence an invoice from a cleaning company in support of their monetary claim.

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 submission of the landlord that this tenancy ended on May 3, 2020. Therefore, I find that the provision of the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"), made under sections 10.1 and 10.2 of the Emergency Program Act on August 14, 2020 requiring a landlord to give the tenant a repayment plan for affected rent is not triggered in the present case.

I accept the evidence of the landlord that the tenant failed to pay rent for the months of March, April and May, 2020 and the tenant vacated the rental unit without providing sufficient notice on May 3, 2020. I therefore find that the tenant was obligated to pay rent in full for those months pursuant to the terms of the tenancy agreement and accept that there is an arrear of \$2,550.00 for this tenancy. I issue a monetary award in the landlord's favour accordingly.

I accept the evidence of the landlord that there was considerable work and cleaning required due to the condition of the rental suite at the end of the tenancy. I find that the detailed invoice submitted and the landlord's testimony to cumulatively be a preponderance of evidence regarding the condition of the suite. I accept that the suite required work including disposing of garbage and furnishings, deep cleaning and repairs to some of the fixtures. I accept that the total cost of the work is \$448.00. I therefore issue a monetary award in that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security 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 \$3,523.00, allowing the landlord to recover unpaid rent, the cost of repairs and cleaning and their filing fees and retain the security deposit for this tenancy. 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 17, 2020

Residential Tenancy Branch