



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hugh & McKinnon Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, 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, loss and unpaid rent pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the 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 corporate landlord was represented by their agent (the "landlord") who 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 by email sent on May 22, 2020 to the email address routinely used by the tenant to correspond about tenancy matters from an email address used by the landlord for such correspondence. Based on the testimony of the landlord and in accordance with section 71(2) of the Act and the Director's Order of March 20, 2020, I find that the tenant is deemed served with the landlord's materials on May 25, 2020, three days after emailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

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

Background and Evidence

The monthly rent for this tenancy was \$2,900.00 payable on the first day of each month. A security deposit of \$1,450.00 was collected at the start of the tenancy and is still held by the landlord. The tenancy ended on November 30, 2019. There was a rental arrear of \$5,900.00 at the end of the tenancy, arising from unpaid rent for October and November, 2019 and penalties for late payment pursuant to the tenancy agreement.

After the tenant vacated the rental unit the landlord found the rental unit required considerable cleaning, repairs and maintenance to restore to its pre-tenancy condition. The landlord submitted invoices and receipts for the work done and submits that the total expenditure was \$562.98.

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 landlord that there was a rental arrear in the amount of \$5,900.00 as at the date of the hearing. I accept the evidence by way of the written tenancy agreement that the tenant was obligated to pay rent in the amount of \$2,900.00 and that a returned cheque charge of \$50.00 applies to failed payments. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$5,900.00 for unpaid rent and fees from this tenancy.

I accept the evidence of the landlord that the rental unit required some cleaning, repairs and work to be done. I am satisfied with the evidence by way of the receipts and invoices that the nature of the work undertaken was reasonable and that the damage is attributable to the tenancy. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$562.98 for the cost of work incurred due to the tenant.

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 \$5,112.98.00, allowing the landlord to retain the security deposit and recover the rental arrear, damages and filing fee. 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: September 24, 2020

Residential Tenancy Branch