



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S, MNRL-S, FFL

Introduction

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

- and a monetary order for money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ('Application') and evidence on April 22, 2020 by way of registered mail. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on April 27, 2020, 5 days after mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 1, 2018, and was to end on May 1, 2020. The tenant moved out on December 31, 2019. Monthly rent was set at \$1,500.00 for the main home, and \$250.00 for the workshop, payable on the first of the month. The landlord collected a security deposit in the amount of \$750.00, which the landlord still holds.

The landlord is seeking a monetary order for unpaid rent in the amount of \$1,500.00 for December 2019, as well as \$250.00 for the months of November and December 2019 for the workshop.

The landlord is also seeking a monetary order for the following losses:

Item	Amount
Unpaid Rent	\$2,000.00
Parts to repair tractors & excavator	597.50
Boat Trailer Sale	1,500.00
2 Chain cinches and tow chain	150.00
Dumping fee	25.00
Less \$1,300.00 credit	-1,300.00
Less Security Deposit Held	-750.00
Filing Fee	100.00
Total Monetary Order Requested	\$2,322.50

The landlord testified that both parties had mutually agreed that the tenant would be allowed to move out before the end of the fixed term tenancy if he was to pay the December 2019 rent as well as reimburse the landlord for the damage to the farm machinery as well as the unpaid sale of the boat trailer. The landlord testified that the tenant failed to remove all of his personal belongings, which the landlord had to remove and dump. The landlord is seeking a monetary order for the losses less the credit for materials left behind.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 26 of the *Act*, in part, states as follows:

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.

The landlord provided undisputed evidence that the tenant failed to pay \$2,000.00 in outstanding rent for this tenancy. Therefore, I find that the landlord is entitled to \$2,000.00 in outstanding rent.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I am satisfied that the landlord provided sufficient evidence to support that the tenant failed to remove all of his personal belongings, which resulted in \$25.00 in dumping fees. Accordingly, I allow this portion of the landlord's monetary claim.

Although the landlord referenced a mutual agreement between the parties, I am not satisfied that the landlord provided sufficient evidence to support that a written agreement was made between the parties. Furthermore, I am not satisfied that the damages claimed by the landlord were caused by the tenant during this tenancy. In the absence of sufficient evidence to support the terms of this mutual agreement, and to sufficiently support that the tenant was responsible for the damages claimed, I dismiss the remainder of the landlord's monetary claim without leave to reapply. As the tenant has not made a cross-application for recovery of his losses, I decline to make any orders regarding the \$1,300.00 credit referenced in the landlord's application.

As the landlord was partially successful with his claim, I allow the landlord recovery of half of the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$1,325.00 in the landlord's favour as set out below:

Item	Amount
Unpaid Rent	\$2,000.00
Dumping fee	25.00
Less Security Deposit Held	-750.00
Filing Fee	50.00
Total Monetary Order	\$1,325.00

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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.

I dismiss the remainder of the landlord's monetary claims without leave to reapply.

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 2, 2020

Residential Tenancy Branch