



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms its email address as set out in the Landlord’s application.

Preliminary Matter

The Landlord states that it is also claiming damages to the unit and that it followed the instructions of the Residential Tenancy Branch (the “RTB”) in making this claim. The Landlord made no application to amend the application for dispute resolution to add the claim for damages to the unit, had no particulars of a damage claim in the application and added a monetary order worksheet with photos as evidence.

Rule 2.2 of the RTB Rules of Procedure provides that claims are limited to what is stated in the application. As no monetary claim for damage to the unit was included in the application and as the Landlord did not make an amendment to the application to include this monetary claim, I find that the Landlord may not now pursue the monetary

claim with its current application. The Landlord remains at liberty to make another application for such a claim.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under handwritten agreement started on or about November 8, 2015 and ended on July 30, 2020. For the last year of the tenancy rent of \$2,231.10 was payable on the first day of each month. The Tenant did not pay the rent for April, May, June and July 2020. The Tenant did not provide a forwarding address to the Landlord.

The Landlord states that he cannot recall whether or not a security deposit was collected. The Tenant states that original rent at the start of the tenancy was \$1,900.00 and that the Landlord collected \$950.00 as a security deposit.

The Tenant states that the rent was unpaid due to the pandemic and due to the Landlord's failure to provide facilities and services.

The Landlord states that the tenancy agreement required the Tenant to pay the utility costs to the Landlord. The Landlord states that for the period January 1 to December 31, 2019 the Tenant failed to pay \$540.00 for water, \$345.00 for sewer, \$123.00 for garbage collection and \$52.00 for recycling costs. The Landlord states that the bill for these claims were provided to the Tenant but that the Landlord does not know whether the bill was provided for this hearing. The Tenant states that while the tenancy agreement does not provide for utilities to be paid to the Landlord, a previous decision found that the Tenant was responsible to pay the Landlord for the water consumption only. The Tenant states that it paid the water bills each month based on the prorated figures provided by the Landlord from the previous year. The Tenant was not able to

recall the date or file number for that previous decision. The Landlord states that the previous decision was dated May 9, 2017. The Landlord provided a file number however it is noted that no file could be located with that file number. Neither Party provided a copy of that previous decision.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of rent payable during the last year of the tenancy and the undisputed evidence of unpaid rent for April, May, June and July 2020, I find that the Landlord has substantiated an entitlement of **\$8,924.40**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of any invoices for the utility costs claimed and considering the Tenant's evidence that some utilities were paid, I find on a balance of probabilities that the Landlord has not substantiated that the costs claimed were incurred. I therefore dismiss this claim.

As the Landlord's claim for unpaid rent has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$9,024.40**.

As the Landlord gave vague evidence in relation to the security deposit, I prefer the Tenant's evidence and accept that the Landlord is holding the Tenant's security deposit of **\$950.00**. Deducting this security deposit plus zero interest from the Landlord's entitlement leaves **\$8,074.40** owed by the Tenant.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$950.00 in full satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$8,074.40**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: October 28, 2020

Residential Tenancy Branch