



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

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

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by co-landlord, PL ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail to the tenant's residential address on June 17, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the tenant received the Notice of Dispute Resolution Proceedings package on June 18, 2020 and provided the proof of delivery confirmation from Canada Post as evidence. I find the Notice of Dispute Resolution Proceedings package was served on June 22, 2020, five days after mailing in accordance with sections 89 and 90 of the Act .

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and utilities?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The tenancy began on September 1, 2019 as a fixed term, set to end on April 30, 2020. Rent was set at \$2,200.00 per month payable on the first day of each month. A security deposit of \$1,100.00 was collected from the tenant which the landlord continues to hold. Utilities were to be paid by the tenant and were not included in the rent. The utilities were put in the landlord's name at the commencement of the tenancy.

The tenant paid rent up until the end of March but didn't pay rent for April. The tenant also failed to pay rent for the month of May however the landlord was unable to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities due to the Ministerial Order M089 proclaimed on March 30, 2020 which prevented evictions at the time.

On May 31st, the tenant emailed the landlord indicating he will be moving out on June 30th, 2020 and that the tenant will have a plan for repayment in June. The landlord accepted the tenant's notice to end the tenancy, agreeing that the tenancy would end on June 30th. Copies of the email exchanges were provided as evidence. The landlord testified that despite the agreement to end the tenancy and repay rent, the tenant didn't pay rent for the month of June, either. In total, the tenant owes the landlord rent for the months of April, May and June, a total of \$6,600.00.

The tenant stopped paying the landlord for the hydro utility he consumed during the tenancy. The landlord provided copies of the hydro bills and a monetary order worksheet indicating the tenant didn't pay hydro utilities of \$73.79 for April, \$57.91 for May and \$33.46 for June 2020.

The landlord testified and provided a copy of the email exchange inviting the tenant to conduct a condition inspection report with him at the end of the tenancy, however the tenant failed to attend. There was damage to the garburator, a fob was not returned, and the door was left unlocked and unattended on the day of the inspection. The landlord is not seeking compensation for any of these items. The landlord testified that the tenant did not provide him with a forwarding address after vacating the rental unit.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the Act states 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 has provided undisputed testimony that the tenant failed to pay rent for the months of April, May or June 2020. I am satisfied that rent, set at \$2,200.00 per month wasn't paid and the tenant didn't have any right to deduct rent. This is contrary to section 26 of the Act and I find the landlord is entitled to recover \$6,600.00 in arrears in rent from the tenant in accordance with section 67.

The landlord has also provided undisputed testimony that the tenant failed to pay utilities as required by the tenancy agreement. The landlord's testimony was corroborated by the utility bills provided as evidence. I am satisfied the tenant was required to pay the hydro utilities for the months of April, May and June 2020 and failed to do so. For breaching the tenancy agreement, I award the landlord \$165.16 ($\$73.79 + 57.91 + 33.46 = \165.16 .)

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$1,100.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary order.

Item	amount
April 2020 rent	\$2,200.00
May 2020 rent	\$2,200.00
June 2020 rent	\$2,200.00
Hydro utilities for April, May and June 2020	\$165.16
Filing fee	\$100.00
Less security deposit	(\$1,100.00)
Total	\$5,765.16

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,765.16**. The tenant must be served with this Order as soon as possible. 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: October 05, 2020

Residential Tenancy Branch