



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On August 20, 2020, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing, and Tenant S.U. attended the hearing as well. All in attendance provided a solemn affirmation.

During the hearing, the parties confirmed that the Tenants gave up vacant possession of the rental unit on September 14, 2020. As they have given up vacant possession of the rental unit, it was not necessary to consider the merits of an Order of Possession.

Landlord Y.L. advised that each Tenant was served a Notice of Hearing and evidence package by registered mail on August 24, 2020. With respect to their digital evidence, on that same day, he stated that he texted the Tenants to see if they could view the digital evidence; however, neither Tenant replied specifically with respect to this matter.

The Tenant confirmed that they received these packages, but they were not able to view the digital evidence. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing and evidence packages. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision. However, as the Landlords did not confirm whether the Tenants could view the digital evidence prior to serving it, in

accordance with Rule 3.10.5 of the Rules of Procedure, I have excluded the digital evidence and will not consider it when rendering this Decision.

He also advised that they amended their Application on September 15, 2020 to increase the amount of monetary compensation they were seeking. However, they served this Amendment, and additional late evidence, to the dispute address on September 15, 2020 despite knowing that the Tenants had already given up vacant possession of the rental unit. As such, I have dismissed the Landlords' Amendment with leave to reapply, and I have excluded the Landlords' late evidence as well.

The Tenant confirmed that they did not submit any evidence to this file for consideration.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 15, 2018 and ended when the Tenants gave up vacant possession of the rental unit on September 14, 2020. Rent was established at \$1,625.00 per month and was due on the fifteenth day of each month. A security deposit of \$812.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants never provided the Landlords with a forwarding address in writing.

Y.L. advised that the Tenants paid rent by electronic transfer; however, they did not pay rent for July or August 2020. As such, the Landlords are seeking compensation in the amount of **\$3,250.00** for the rent arrears for these months.

The Tenant advised that they withheld rent for these months due to a pipe that burst in May 2019 and due to other deficiencies in the rental unit. She confirmed that she did not have any right under the *Act* to legally withhold the rent based on her dissatisfaction.

Y.L. also advised that the Tenants damaged a door in the rental unit, and this was discovered on June 18, 2020. He requested that they fix this and then sent the Tenants a letter on August 6, 2020 to repair the damage by August 20, 2020. However, they refused to fix the door. The hole in the door cost **\$150.00** to repair and they are seeking compensation in this amount.

The Tenant confirmed that they were negligent for this damage and agreed that \$150.00 was a suitable amount to fix this damage.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

The undisputed evidence before me is that the rent was not paid in full when it was due and there is no evidence before me that the Tenants were entitled to withhold the rent. As well, the Tenant confirmed that they did not pay the rent, but falsely believed they had a right not to. As such, I am satisfied that the Landlords are entitled to a monetary award for the rent arrears for July and August 2020. Accordingly, I grant the Landlords a monetary award in the amount of **\$3,250.00** to satisfy this debt.

With respect to the damage to the door, as the Tenant confirmed that they were responsible for the damage and that the cost to repair the door was reasonable, I grant the Landlords a monetary award in the amount of **\$150.00** to rectify this claim.

As the Landlords were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of the amount awarded.

The claims in the Landlords' Amendment are dismissed with leave to reapply.

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

July 2020 rent arrears	\$1,625.00
August 2020 rent arrears	\$1,625.00
Door repair	\$150.00
Filing fee	\$100.00
Less security deposit	-\$812.50
TOTAL MONETARY AWARD	\$2,687.50

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$2,687.50** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 5, 2020

Residential Tenancy Branch