



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 order for unpaid rent and utilities, damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants 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 landlord attended and 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 with the notice of application and evidence by registered mail sent on July 2, 2020. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on July 7, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant to Residential Tenancy Policy Guideline 12 the refusal of a party to accept or pick up registered mail does not override the deeming provisions of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposits for this tenancy?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord submitted into documentary evidence a large volume of materials including copies of ongoing correspondence with the tenant, photographs, videos, receipts, invoices and tenancy documents. The tenant did not attend this hearing but submitted into evidence documentary submissions in response to the landlord's claim.

The landlord provided undisputed evidence on the following facts. This tenancy began on April 1, 2019. Monthly rent was \$2,200.00 payable on the first of each month. The tenant was also responsible for paying the utilities for the rental unit. A security deposit of \$1,100.00 and pet damage deposit of \$1,100.00 were collected by the landlord and are still held.

There have been multiple other hearings under the file numbers on the first page of this decision for applications from both the landlord and tenant. In a previous decision dated May 29, 2020 the landlord was issued an Order of Possession ending the tenancy effective July 31, 2020.

The landlord submits that the tenant failed to pay rent for the months of June and July, 2020 and there is a rental arrear of \$4,400.00 as at the date of the hearing. The landlord further submits that the tenant failed to pay utilities as required under the tenancy agreement and there is an arrear of \$279.20 for utility charges as at the date of the hearing. In their written submissions the tenant confirms that they failed to pay rent for June, 2020 and that there is a utility arrear.

The landlord submits that the parties conducted a move-out inspection and a condition inspection report was prepared. The landlord noted a number of issues in the rental unit requiring cleaning, maintenance or work. The tenant did not agree to any deductions from the deposits. The landlord submitted into evidence various photographs and video recordings of the issues in the rental suite as well as invoices

and receipts for work performed. The landlord submits that the total cost of the work is \$268.50.

The landlord also submits that the tenants made an unauthorized deduction of \$30.00 from a payment they had agreed upon. The landlord submitted into evidence copies of correspondence between the parties referencing the payment.

The landlord submits that due to the ongoing conflicts with the tenant they have suffered anxiety and stress and required some medical intervention. The landlord submitted into evidence copies of a doctor's note attesting to the landlord's health and receipts for treatment and medication in the amount of \$67.20.

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 evidence of the landlord that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to pay rent in the amount of \$2,200.00 and utilities. I accept the evidence of the landlord that the tenant failed to pay rent for the months of June and July and there is a rental arrear of \$4,400.00 as at the date of the hearing. I further accept that there is a utility arrear of \$279.20 for which the landlord made written demand from the tenant. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$4,679.20 for unpaid rent and utilities.

I accept the evidence of the landlord that the rental unit required some maintenance, cleaning and work to be restored to its pre-tenancy condition. I find the preponderance of evidence submitted by the landlord showing the condition of the suite and the work undertaken to be sufficient to determine that there was damage to the suite attributable to the tenancy and that the landlord incurred costs as a result. I accept the evidence of

the landlord that the cost of the work performed is \$268.50 and issue a monetary award in that amount accordingly.

Based on the documentary evidence submitted, I find that there was an enforceable agreement between the parties for payment and that the tenant made an unauthorized deduction of \$30.00 from the agreed upon amount. Accordingly, I find that the landlord is entitled to a monetary award for that amount.

The landlord submits that the tenant's behaviour and ongoing conflict has caused considerable stress and anxiety. I accept the landlord's evidence in support of this portion of their monetary claim. Based on the totality of the documentary evidence submitted by the parties it is evident that this has been an ongoing adversarial relationship. Nevertheless, I find the volume, contents and tone of the correspondence from the tenant to exceed what would be reasonable under the circumstances and descend into what would accurately be characterized as harassment. I accept that as a result of the tenant's conduct the landlord has suffered health issues as attested to by their attending physician. I accept that the landlord required medical intervention as a result of the tenant's actions and the cost of the treatment and medication is \$67.20. I issue a monetary award in that amount in the landlord's favour.

As the landlord's application was successful 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 and pet damage 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 \$2,944.90 under the following terms:

| Item | Amount |
|------------------------------|-------------------|
| Unpaid Rent June & July 2020 | \$4,400.00 |
| Unpaid Utilities | \$279.20 |
| Cleaning and Repairs | \$268.50 |
| Payment Arrear | \$30.00 |
| Medical Bills | \$67.20 |
| Filing Fee | \$100.00 |
| Less Security Deposit | -\$1,100.00 |
| Less Pet Damage Deposit | -\$1,100.00 |
| TOTAL | \$2,944.90 |

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: October 16, 2020

Residential Tenancy Branch