



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, 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 damage to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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 that its email address as set out in the Landlord’s application is correct.

Preliminary Matter

Tenant LZ states that its correct name is Tenant ZL as set out on the attendance record on the cover page of this Decision. The Landlord declines to change the order of the Tenant’s name as set out in the application. I therefore do not make any changes to the Tenant’s name as set out in the Landlord’s application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on January 8, 2018. No move-in inspection report was completed. Rent of \$1,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Parties agree that two tenancy agreements were made. The first agreement, unsigned but written, provides that the Tenants will pay ½ of the electricity costs. The second agreement provides that rent includes all utilities except electricity. At the end of May 2020, the Tenants verbally informed the Landlord that they would be completely moved out of the unit on June 30, 2020. The Landlord did not ask the Tenants to put their notice in writing. No move-out inspection report was completed. On July 16, 2020 the Tenants sent their forwarding address to the Landlord by registered mail and the Landlord received this mail on July 20, 2020.

The documents provided in the language other than English were provided with translations. Neither party raised any issues with the translations.

The Landlord states that in February 2018 the Parties entered into a verbal agreement that the Tenants would also pay half the gas bills. The Landlord states that the Tenants thereafter paid the both the gas and electricity bills to and including June 2019. The Landlord states that the Tenants have not paid the gas and electricity for the period July 2019 to June 2020 and the Landlord claims \$1,273.46. The Landlord provides copies of banking statements and a page setting out the amounts of utilities owed. The Landlord states that while it did not provide any copies of the utility bills for the period claimed as evidence to either the Tenant or the Residential Tenancy Branch, the Tenant had been given copies of these bills in July 2020.

The Tenant states that the Landlord is claiming more than half the electrical costs and agrees to pay half the costs that the Tenant states is \$589.60. The Tenant states that the Landlord did not provide any actual copies of the bills for any of the utilities. The

Tenant states that there was no agreement to pay for gas. The Tenant does not deny that prior gas bills were paid as stated by the Landlord.

The Landlord states that the Tenant left damages to a shower curtain, the toilet, a tap and a sink. The Landlord provides black and white photos of these items. The Landlord claims \$504.46. The Landlord confirms no receipts for the costs claimed in relation to these items were provided for this dispute. The Tenant states that it did not damage these items.

The Landlord states that the Tenant left the unit very unclean and claims the cleaning costs of \$600.00. The Landlord states that it did this cleaning itself over two days. The Landlord confirms that no invoice for this cost has been provided and that the amount was not based on an hourly rate or the number of hours to clean. The Landlord states that it provided photos of the unit. The Tenant states that the unit was left reasonably clean.

The Landlord states that the Tenant did not provide any written notice to move out of the unit and that the Landlord only received written notice on July 21, 2020. The Landlord claims lost rental income of \$1,000.00 for July 2020 and lost rental income of \$645.00 for 20 days in August 2020. The Landlord states that they did not rent the unit again. The Landlord states that in August or September 2020 the unit was advertised at the offices of the local immigration society for monthly rent of \$1,150.00. The Landlord states that they could not rent the unit sooner due to the damage left by the Tenant.

The Tenant states that on July 11, 2020 the Landlord sent the Tenants a text confirming receipt of the Tenants' formal notice to end the tenancy. The Tenant provides a copy of this text. The Tenant argues that they are not responsible for the lost rental income claimed.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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 gas bills, I find that the Landlord has not substantiated the amount claimed for gas and I dismiss this claim. Given the Tenant's agreement that it owes the Landlord **\$589.60** for electricity costs I find that the Landlord has substantiated an entitlement to this amount. Given the lack of any electrical bills for the remaining amounts claimed I find that the Landlord has failed to provide sufficient evidence to support these costs. I dismiss the remaining amount claimed for electricity costs.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Although the Landlord provided photos of items claimed to be damaged by the Tenant, these photos are grainy and do not adequately show damage. Given the lack of a move-out inspection indicating such damage and considering the Tenant's evidence that no damage was left to these items, I find on a balance of probabilities that the Landlord has not substantiated an entitlement to its claim of \$503.46 and I dismiss this claim.

The only photos provided by the Landlord depict the various items claimed to be damage by the Tenant as set out above. There are not photos of a dirty unit. For these reasons and given the lack of a move-out report noting an unclean unit along with the Tenant's evidence that the unit was left clean, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left the unit unclean. I dismiss the claim for cleaning costs.

Given the Tenant's undisputed evidence that the Landlord texted the Tenants to confirm that it received the Tenants' formal notice to end the tenancy, I find that the Landlord has not substantiated that it did not receive any notice to end the tenancy. Further, even if the Landlord did not receive the Tenant's notice to end the tenancy, I do not consider advertising the unit at one location and not on any online sites, along with a higher rental amount being sought, to be evidence of reasonable mitigation of lost rental income. I therefore dismiss the claim for lost rental income.

Given that the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$689.60**. Deducting the security deposit plus zero interest of **\$500.00** from this amount leaves **\$189.60** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest in the amount of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$189.60**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 17, 2020

Residential Tenancy Branch