



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee from the tenant 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 September 20, 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 September 25, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified that the tenant had vacated the rental unit and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony on the following facts. This periodic tenancy began in June, 2019. Monthly rent was \$1,400.00 payable on the first of each month. A security deposit of \$700.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that there is a rental arrear of \$5,800.00 arising from rent unpaid for the months of April, May, June, July and August, 2020 and seeks a monetary award in that amount for unpaid rent.

The landlord also submits that the tenant incurred a number of fines from the strata corporation managing the rental building for various violations including noise, unauthorized use of parking spaces, and keeping pets on the property. The landlord submits that the total amount of fines levied by the strata corporation, including late charges is \$2,127.96. The landlord submitted correspondence and statements from the strata corporation as evidence of the fines.

The landlord also submits that they incurred costs for repairing damage to the rental unit and that various utilities have been unpaid. The landlord submitted no documentary evidence in support of this portion of their claim.

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 the tenant was obligated to pay rent under the tenancy agreement and failed to do so. I accept that the total arrear for this tenancy is \$5,800.00. Accordingly, I issue a monetary award in that amount.

I accept that there have been a number of fines levied by the strata corporation due to the conduct and violations of the tenant. I am satisfied by the documentary evidence

submitted that the total cost of fines to be \$2,127.96. Accordingly, I issue a monetary award in that amount.

I find insufficient evidence in support of the remaining portion of the landlord's claim. I find little evidence of damage to the rental unit, that the damage is attributable to the tenant or that the landlord incurred any costs related to damage. Similarly, I find insufficient evidence of any utility arrear or that the tenant is obligated to pay utilities to the landlord. As such, I dismiss this portion of the application without leave to reapply.

As the landlord was successful in their application, they are entitled to recover the 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 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 \$7,327.96. 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: November 5, 2020

Residential Tenancy Branch