



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord and Legal Counsel, seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord the keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and was assisted by Legal Counsel. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. Legal Counsel advised that the tenants were individually served with the Application for Dispute Resolution and notice of this hearing by registered mail on August 19, 2020 and was permitted to provide proof of such service during the hearing. I now have 2 Registered Domestic Customer Receipts and a Canada Post cash register receipt bearing that date and showing the same tracking numbers, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Legal Counsel for the landlord also uploaded additional evidence without approval. Other than proof of service, any evidence that a party wishes to rely on must be provided to the opposing party at least 14 days prior to the hearing. Since the tenants have not been served with the additional evidence in accordance with the Rules of Procedure, I decline to consider it.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for returned cheque fees?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2018 and expired on June 30, 2020 thereafter reverting to a month-to-month tenancy which ultimately ended on July 31, 2020, although keys were not returned to the landlord until August 3, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,200.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling.

The tenancy agreement, a copy of which has been provided for this hearing, specifies rent in the amount of \$4,400.00 which increases to \$4,500.00 commencing on July 1, 2020. That clause is initialled by the landlord and both tenants.

The tenants gave notice to vacate the rental unit and a copy has been provided for this hearing. It is dated June 30, 2020 and contains an effective date of vacancy of July 31, 2020. The tenants had not paid any rent for April, May, June or July, 2020, and the landlord claims \$18,000.00 for unpaid rent, however the landlord received \$1,800.00 for BC Rental Support assistance which was received for April, May and June, but nothing was received for July, 2020. The landlord reduces the claim for unpaid rent by \$1,800.00.

The Addendum to the tenancy agreement provides for \$50.00 for returned rent cheques and the landlord claims the cost of 3 returned cheques.

The tenants also failed to pay District Utilities, and a copy of a utility bill has been provided for this hearing. It is dated June 30, 2020 and covers the period of April 1 to June 30, 2020. The landlord also claims an estimated amount for the month of July, 2020 in the amount of \$400.00.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totaling \$18,037.60:

- \$150.00 for 3 returned cheques pursuant to s. 17 of the Addendum;
- \$4,500.00 rent for April;
- \$4,500.00 rent for May;
- \$4,500.00 rent for June;

- \$4,500.00 rent for July;
- \$100.00 for the cost of this dispute;
- \$1,187.60 for District Utilities to June 30, 2020;
- \$400.00 for District Utilities estimated for July, 2020;
- LESS \$1,800.00 BC Rental Support assistance.

The landlord further testified that move-in and move-out condition inspection reports were completed by the parties, and provided for this hearing. The move-out portion is dated July 31, 2020 and contains a forwarding address of the tenants. The tenants have not served the landlord with an Application for Dispute Resolution claiming the security deposit, and the landlord seeks to keep it in partial satisfaction of the claim.

Analysis

I have reviewed the tenancy agreement, and I am satisfied that the tenants agreed that rent would be \$4,500.00 per month commencing July 1, 2020. I accept the undisputed testimony of the landlord that the tenants did not pay any rent for the months of April, May, June or July, 2020, other than \$1,800.00 paid by BC Rental Support assistance, and I find that the landlord has established a claim of **\$16,200.00**.

The tenancy agreement also specifies that the tenants are responsible for utilities, and the bill provided for this hearing amounts to \$1,187.60 to the end of June, 2020. Given the amount of the bill provided for this hearing, I am also satisfied that the estimate for July, 2020 utilities is reasonable, and I grant a monetary order in favour of the landlords for **\$1,587.60**.

The landlord also claims \$150.00 for 3 returned rent cheques pursuant to the Addendum to the tenancy agreement. However, the regulations state:

- 7** (1) A landlord may charge any of the following non-refundable fees:
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
 - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, the tenancy agreement provides for a fee, but more than permitted by the regulations. Therefore, I grant an administration fee for return of 3 cheques for a total of **\$75.00**.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the **\$100.00** filing fee.

Having found that the tenants are indebted to the landlord the sum of \$17,962.60 (\$16,200.00 rent + \$1,587.60 utilities + \$75.00 late fees + \$100.00 filing fee), I order the landlord to keep the \$2,200.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference of **\$15,762.60**.

Conclusion

For the reasons set out above, I order the landlord to keep the \$2,200.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$15,762.60**.

This order is final and binding and may be enforced.

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 10, 2020

Residential Tenancy Branch