



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 dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “*Act*”) for a monetary order for unpaid rent and utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Landlord’s spouse (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on September 3, 2020, two Canada Post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on June 1, 2019, as a one-year fixed term tenancy. Rent in the amount of \$3,300.00 was to be paid by the first day of each month, and the Landlord had been given a \$1,650.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement and the move-in inspection report into documentary evidence.

The Landlord testified that the Tenants moved out of the rental unit on May 28, 2020, returning the rental unit to them in a damaged and unclean state. The Landlord testified that they are claiming for \$400.00 in their labour cost to clean the rental unit and dispose of garbage the Tenants left in the rental unit at the end of this tenancy. The Landlord submitted 49 pictures taken of the condition of the rental unit at the end of tenancy into documentary evidence.

The Landlord also testified that there was \$4,600.00 in outstanding rent at the end of this tenancy, consisting of for \$1,300.00 for April and \$3,300.00 for May 2020. The Landlords are requesting to recover the unpaid rent for this tenancy.

The Landlord testified that they are also claiming for \$3,300.00 in lost rental income for June 2020. The Landlord testified that it took them three days to clean the rental unit at the end of tenancy and that due to the COVID-19 pandemic, they were unable to hire anyone to assist them in getting the rental unit cleaned up and repaired. Due to this, they were unable to show the rental unit until mid June 2020.

Finally, the Landlord testified that they are claiming for \$2,464.58 in unpaid utility bills (Hydro, Gas and Water) for this tenancy. The Landlord referred to the Tenancy Agreement, section three, which outline the Tenants' requirement to pay the utilities for this tenancy. The Landlord submitted a detailed accounting of the outstanding utility bills, as well as eleven copies of utility invoices, into documentary evidence.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

The Landlord is claiming for compensation in the amount of \$400.00 for cleaning the rental unit at the end of this tenancy; I accept the testimony of the Landlord supported by their picture evidence that the Tenants returned the rental unit in an uncleaned and damaged state at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) *When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned and damaged. I find that the Landlords have provided sufficient evidence to prove the value of their losses and that they took reasonable steps to minimize those losses due to the Tenants' breach. Therefore, I award the Landlord their request amount of \$400.00 in labour costs to clean and repair the rental unit at the end of this tenancy.

The Landlord has also claimed for \$4,600.00 in unpaid rent and \$2,464.58 in unpaid utilities for this tenancy, section 26(1) of the *Act* states that a tenant must pay the rent and utilities when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

- 26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.*
- (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*
- (a) seize any personal property of the tenant, or*

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

*(a) the landlord has a court order authorizing the action, or
(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid for April and May 2020 and that the utilities, including hydro, gas and water, have not been paid for the period between January 2020 to May 2020 for this tenancy. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent and utilities as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$7,064.58, comprised of \$1,300.00 in rent for April 2020, \$3,300.00 in rent for May 2020 and \$2,464.58 in unpaid utilities. I grant the Landlord permission to retain the security deposit for this tenancy in partial satisfaction of this award.

As for the Landlord's claim for compensation in the amount of \$3,300.00 for the loss of rental income for June 2020, awards for compensation due to damages or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that this tenancy legally ended on May 31, 2020, in accordance with the Act. I acknowledge the Landlord's argument that the Tenants' returned the rental unit to them uncleaned, which I agree is a breach of the Act, and I accept the Landlord's testimony that it took them three days to complete the cleaning. However, I find that the need for this cleaning to have been insufficient cause to create any obligation on these Tenants to pay additional months rent, for two reasons. The first is that the Tenants returned possession of the rental unit to the Landlord on May 28, 2020, three days before the legal end of the tenancy date. As per the Landlord's own testimony, that it took them three days to clean the rental unit, I find that there was sufficient time between May 28 to May 31, 2020, for the Landlord to get this rental unit ready for another tenancy.

Secondly, where I can understand that due to conditions surrounding the COVID-19 pandemic that it would have been difficult to hire someone to clean the rental unit, I do not find that the fault for this hardship can be assigned to these Tenants.

For these reasons, I find that the Landlord has not established cause sufficient to support their claim for the recovery of the loss of rental income for June 2020, and I dismiss this portion of the Landlord's claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$5,914.58, consisting of \$400.00 in labour costs for cleaning and repairs, \$4,600.00 in unpaid rent for April and May 2020, \$2,464.58 in unpaid utility bills, and the recovery of the \$100.00 filing fee for this hearing, less the \$1,650.00 security deposit they are holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$5,914.58**. The Landlord is provided with this Order in the above terms, and 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 30, 2020

Residential Tenancy Branch