



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 28, 2020, and on December 7, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end tenancy;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit pursuant to section 67; and,
- to recover the filing fee from the tenant for the cost of this application.

Both parties attended the first hearing and service of the documents became an issue. Both parties were ordered to re-serve their evidence, via email, prior to this second hearing. At the second hearing, both parties confirmed receipt of each other's evidence, and did not take issue with the service of those documents. The hearing proceeded on December 7, 2020.

At the time the Landlord filed his application for monetary compensation, on or around August 11, 2020, he uploaded a monetary worksheet, speaking to several items. Since that time, the Landlord uploaded a new monetary worksheet, with increased amounts. However, I note the Landlord has failed to submit an amendment to his application, such that he could obtain further compensation, beyond what was listed on his initial application. Given no amendment was filed, to modify or add to the amounts laid out on his initial application, his claim will be limited to what was initially applied for on the August 11, 2020, worksheet. The updated worksheet will not be considered further.

The parties also agree that the Tenants moved out several months ago, and the Landlord's application for an order of possession is no longer necessary. I dismiss the Landlord's application for an order of possession, without leave to reapply, as the issue is now moot.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

A tenancy agreement was provided into evidence, which shows that monthly rent is set at \$2,350.00, and was due on the first of each month. Under the section "what is included in rent", the tenancy agreement also shows that internet is included, but water, cable, electricity and heat are not. The tenancy agreement also shows that laundry is included. Despite the tenancy agreement initially listing that internet was included in rent, the parties both agreed that the monthly rent is now \$2,410.00, which included an additional charge of \$60.00 for internet costs. Neither party disputed that the actual amount of current rent paid each month was \$2,410.00 and that it included internet.

The tenancy agreement confirms that the Tenants paid a security deposit in the amount of \$1,175.00. The Landlord confirmed that he still holds this amount.

A move-in inspection was completed on October 9, 2019. A copy of the move-in portion was signed at that time, and no issue was raised with respect to what was noted on the move-in portion of the condition inspection report. A move-out inspection was completed on August 30, 2020. However, the parties are in complete disagreement about the move-out portion of the report.

At the time of the move-out inspection, the Landlord stated that he gave the condition inspection report document to the Tenants so that they could fill out some of the report on their own. Then the Landlord stated he took the report, and filled in more information. The Landlord asserts that the Tenant's signed the document after he added his information.

The Tenants agree that they filled out some of the move-out portion of the report, but assert that after they signed it, the Landlord altered and added in damages which they did not agree with. The Tenants took a photo of one of the pages of the move-out condition inspection report after they had completed part of it and contrasted this with the report which the Landlord submitted. The Tenants did this to show that the Landlord added in some writing (garburator, dishwasher, air conditioner) after they had finished with it.

The Landlord's claim, as outlined on his initial monetary order worksheet, is as follows:

- 1) \$78.75 – Washing machine repair bill
- 2) \$1,083.63 – Replacement washing machine

The Landlord stated that the Tenants misused the washing machine, which caused premature failure of the bearings. The Landlord explained that he believes that the Tenants repeatedly overfilled the machine, which caused strain on the bearings. The Landlord stated that this is well beyond reasonable wear and tear. The Landlord explained that he bought this house in February 2017, and he believes that the previous owner put in new machines before he bought the house. However, he had no documentary evidence to show the age of the machine or to show that they were new at the time he bought the house.

The Landlord provided a copy of the invoice for the repair, which states that there is a "bearing issue" and that it is an expensive repair. The technician recommended to avoid large loads and too much detergent to reduce wear on bearings. The Landlord feels this advice is proof the Tenants did the damage by repeatedly overloading the machine.

The Tenants stated that they never misused this machine, nor did they ever overload it. The Tenants stated that the repair technician only gave advice to prevent further issues, and his invoice in no way shows that it was their fault. The Tenants stated that they took a photo (in evidence) of the manufacture date of the appliance, which shows that it was made sometime in 2012.

The Landlord explained that he eventually replaced the washing machine, at the above noted amount, after he realized the full bearing assembly repair bill was going to be so high.

- 3) \$2,350.00 + \$60.00 – Unpaid June rent/internet
- 4) \$2,350.00 + \$60.00 – Unpaid July rent/internet

The Landlord stated that the Tenants failed to pay any rent for June or July 2020. The Landlord provided copies of his bank statements, to show that he didn't deposit any money for these months. The Landlord stated that the Tenants paid by post-dated cheques for the first part of the tenancy (from October 2019 until May 30, 2020). The Landlord expected the Tenants to move out at the end of May, as this is when their fixed term expired. After the Tenants failed to move out at the end of May, the Landlord stated that he and the Tenants signed a mutual agreement to end tenancy on June 13, 2020, effective August 31, 2020. A copy was provided into evidence. The Landlord stated that at the time the Tenant's signed this mutual agreement, they insisted he give them advance rent receipts for June and July rent before they signed the mutual agreement. The Landlord feels he was pressured into giving the Tenants advance receipts in order to get the Tenants to agree to move out, even though he says he was not given any actual rent monies for those months.

The Tenants deny they asked the Landlord to pre-issue rent receipts in advance in order to sign the mutual agreement. The Tenants stated that they were given these receipts by the Landlord because they actually paid for rent, not for any nefarious reason.

The Tenants elaborated further and explained that they tried to give post dated cheques for June 2020 through till August 2020 when the Landlord came to meet them on May 1, 2020. The Tenants provided copies of the cheques and the cheque numbers. The Tenants stated that the Landlord came back to them on June 1, 2020, and demanded that the Tenants pay rent in cash, rather than by cheque. The Tenants stated they paid June rent in cash around June 3, 2020, and the Landlord signed a receipt (provided into evidence) for \$2,410.00 for June rent on that date. The Landlord acknowledged signing the receipt for this amount but stated he signed this receipt, as well as the one for July 2020 (also provided into evidence) at the time the mutual agreement was signed, which was June 13, 2020. The Landlord stated that no money was ever paid for June or July, despite the fact that he signed receipts for those months.

The Tenants provided copies of text messages showing that the Landlord came by on July 1, 2020, around 12:45 pm, which is when they assert rent was paid for July, in cash. The Tenants also stated that the Landlord issued them a receipt for July rent on July 1, 2020, when he picked up the cash. As previously stated, the Landlord denies issuing this receipt on July 1, 2020, and says he signed both of the receipts on June 13, 2020, without actually receiving any money. The Tenants provided several witness statements of family members who witnessed the transactions for June and July rent payment. The Tenants also provided a copy of a signed letter from a friend who stated the Tenants sent him an e-transfer, and he then withdrew the cash from his bank account so that the Tenants could pay in rent in cash (since their bank was in Alberta, and they could only use e-transfers or cheques).

5) \$2,350.00 + \$60.00 – Unpaid August rent/internet

The Tenants agree that they never paid for August 2020 rent, and this amount is not in dispute. The Tenants stated they were unable to pay due to COVID related income loss.

6) \$900.00 – Air Conditioner Repair

The Landlord stated that the house has a built-in air conditioner, which was functioning correctly at the time the Tenants moved in, but was not working when they moved out. The Landlord stated that the Tenants told him sometime in April 2020 that the air conditioner wasn't working, and he obtained a verbal quote for the above amount. The Landlord stated he has not yet completed the repair to the air conditioner. The Landlord did not explain further what was broken, exactly. The Landlord explained that he thinks the air conditioner is around 7 years old, as that is when the house was built, but he was not sure, as the air conditioner was installed before he bought the house in 2017.

The Tenants stated that they moved into the rental unit in October of 2019, so they never actually tested the air conditioner until April 2020, when they went to use it for the first time. The Tenants stated that they discovered at this time that the unit was broken and notified the Landlord.

7) \$100.00 – Broken fridge shelves

The Landlord pointed to the move-in inspection and stated that there was no damage noted on that portion of the report. The Landlord stated that the Tenants broke a shelf in the fridge and the above noted amount is an approximate amount to replace the shelf. The Landlord did not present any documentary evidence showing which shelves were

broken, and how the estimate was determined. The Landlord stated he had a conversation with an appliance company about getting the shelves but they could not find any, so the repair is not completed.

The Tenants stated that this level of detail was not captured on the condition inspection report at the time they moved in. However, they took photos the day they moved in, on October 10, 2019. The Tenants provided copies of these photos, with date stamps, showing broken shelves in the fridge. The Tenant stated that this damage was pre-existing, and was not their fault and it can be seen that the fridge does not even have their food loaded into it yet, since it was right at the start of the tenancy.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

- 1) \$78.75 – Washing machine repair bill
- 2) \$1,083.63 – Replacement washing machine

I have reviewed the evidence and testimony on this matter, and I do not find the Landlord has sufficiently demonstrated that the issue with the washing machine was due to Tenant misuse or neglect. I note the appliance technician stated that the bearings were shot, and that is was an expensive repair. However, the invoice/repair document does not state that the issue was *caused* by misuse or neglect. Rather, it

appears to provide general information regarding how to avoid issues with the bearings (avoiding large loads, using the right detergent).

In any case, I do not find this repair note from the technician supports the Landlord's claim that the Tenants overloaded the washing machine and misused it. I find the Landlord has failed to sufficiently demonstrate that the breakdown of the bearing was above and beyond what could be considered reasonable wear and tear. I do not find the Landlord has sufficiently proven the Tenants are responsible for this repair, or for the subsequent washer replacement.

I dismiss these items, in full.

3) \$2,350.00 + \$60.00 – Unpaid June rent/internet

4) \$2,350.00 + \$60.00 – Unpaid July rent/internet

I have reviewed the evidence and testimony on this matter, and I note the parties have drastically different versions of events. The Landlord asserted that no rent was paid for June or July of 2020. The Landlord provided copies of his bank statements to show that no deposits were made during those months. However, I do not find the absence of evidence of a deposit during those months, to be very compelling evidence that the Tenants failed to pay in cash. The Landlord acknowledged signing the rent receipts for June and July, but asserts these were both given to the Tenants and signed by him on June 13, 2020, at the time the mutual agreement was signed.

I note the Landlord has asserted that he only signed the June and July rent receipts because the Tenants pressured him at the time they were signing the mutual agreement to end tenancy on June 13, 2020. However, I find there is insufficient evidence to support that any duress or coercion occurred when the Landlord signed the rent receipts.

The Tenants have provided a contrasting version of events in that they paid the Landlord two cash payments, one on or around June 3, 2020, for June rent, and the other on July 1, 2020, for July rent. I note the Tenants have provided letters from family members and friends who support that these transactions happened. More specifically, a brother and a sister-in-law of one of the Tenants witnessed the cash transaction occur on July 1, 2020, when the Landlord was observed accepting cash from the Tenants. The Tenants also explained that since their bank is local to Alberta, it is not as easy for them to withdraw cash. As such, they provided a letter from a friend who accepted cash e-transfers from the Tenant, and subsequently withdrew the cash, so the Tenants could

give the cash to the Landlord. The Tenants provided some e-transfer history showing some of these transfers.

I note the Landlord is required to issue receipts when rent is paid in cash, pursuant to section 26(2) of the Act. In general, receipts are supposed to be a document that represents proof of a financial transaction. However, in this case, the Landlord asserts he issued the receipts "in advance" even though he never actually received any money. I have weighed these two competing versions of events, and I find the Tenants have provided a more detailed and compelling version of events (witness statements, partial transaction history). In the absence of evidence showing the Landlord was pressured into signing the rent receipts, it is unclear why the Landlord would sign both rent receipts, for June and July, both on June 13, 2020, without having actually received any money. Overall, I have placed more weight on the Tenant's version of events, and I find it more likely than not that the Tenants paid June and July rent, respectively, and that they were given receipts for these transactions at the time they made the payments to the Landlord. I do not accept the Landlord's version of events on this matter.

Ultimately, in this case, the onus is on the Landlord to establish his claim and demonstrate he is owed the unpaid rent. However, I find the Landlord has failed to sufficiently demonstrate he is owed this amount. I find it more likely than not that rent for June and July was paid to the Landlord in cash.

5) \$2,350.00 + \$60.00 – Unpaid August rent/internet

The Tenants agree that they never paid for August 2020 rent, and this amount is not in dispute. The Tenants stated they were unable to pay due to COVID related income loss. Although the tenancy agreement indicates internet is included in base rent of \$2,350.00, it appears the parties have come to an agreement since the time that agreement was signed, and the Tenants have been paying \$2,410.00 monthly. Neither party disputed that monthly rent, at the material time, was \$2,410.00. As such, this is the amount that will be awarded for August 2020.

I award this amount, in full, as it is not in dispute.

6) \$900.00 – Air Conditioner Repair

I have considered the evidence and testimony on this matter, and I note this air conditioner is part of a built-in system at the house. The air conditioner unit sits outside the house, away from the interior living space. I note the Landlord estimated that the air

conditioner was around 7 years old. However, he did not purchase the unit, as it came with the house when he bought it, and he did not have any further documentation to show its age. It is also not clear what exactly was broken on the air conditioner, other than the fact it would not cool the house down, as intended.

I note Policy Guideline #1 - *Landlord & Tenant – Responsibility for Residential Premises* states the following:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site.

Given the lack of evidence showing what was wrong with the air conditioner, I do not find the Landlord has sufficiently demonstrated that the Tenants caused any damage to the unit. It is not clear whether there was a deliberately broken piece on the unit, or whether it failed under normal use. Ultimately, without further proof from the Landlord, I find the Tenants are not liable for the malfunctioning air conditioner. This item is dismissed, in full.

7) \$100.00 – Broken fridge shelves

Having reviewed this item, I accept that no damage was noted on the move-in inspection report, under the relevant portion of that report. I note this move-in inspection was completed on October 9, 2019, and was signed by both parties. However, I also note the Tenants have uploaded time stamped photos, showing they took photos of the damaged shelves in the fridge before they had even put any of their own food into the fridge on October 10, 2019. The photos are time stamped around 1pm on October 10, 2019, which is a matter of hours after they moved in, and likely before they would have begun using the fridge.

I find these photos suggest that the damage was not likely caused by the Tenants. By way of these photos, taken before they began using the fridge, I find the Tenants have provided a preponderance of evidence to the contrary (showing the condition of the rental unit was actually different than what was noted on the move-in condition inspection report). I accept the photos as reliable evidence, given they were taken at a time which appears to be before any meaningful use occurred, and the same day they moved in. I find it more likely than not that the damage was pre-existing, and the Tenants are not liable for this item. I dismiss this item, in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: August of 2020	\$2,410.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,175.00)
TOTAL:	\$1,335.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,335.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 8, 2020

Residential Tenancy Branch