



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the adjourned Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on August 6, 2020. The Landlord applied for a monetary order for unpaid rent, for a monetary order for monetary order for compensation for my monetary loss or other money owed permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were 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 a monetary order for rent and unpaid utilities?
- Is the Landlord entitled to a monetary order for compensation for my monetary loss or other money owed?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on September 1, 2019, as a month to month tenancy. Rent in the amount of \$1,900.00 was to be paid by the first day of each month. The tenancy agreement recorded that the Landlord had been given a \$950.00 security deposit at the outset of this tenancy. The parties also agreed this this tenancy had ended as August 31, 2020.

The Landlord testified that the Tenants did not pay the rent due for this tenancy in the amount of \$13,850.00; consisting of \$150.00 for October 2019, \$1,900.00 for November 2019, \$1,900.00 for December 2019, \$1,900.00 for January 2020, \$1,900.00 for April, \$900.00 for May 2020, \$1,900.00 for June 2020, \$1,400.00 for July 2020, and \$1,900.00 for August 2020. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant testified that they paid the full rent for October 2019, but they agreed that they had not paid the full rent due for November 2019, December 2019, January 2020, and April through August 2020. The Tenants argued that they had an agreement with the Landlord for a rent reduction between April to August 2020 and that they only own \$1000.00 a month for that period.

The Landlord testified that there was no agreement for a rent reduction between April to August 2020.

The Landlords testified that the Tenants did not pay the utilities for this tenancy as required by the tenancy agreement; the Landlord is requesting to recover \$1,965.01 in the unpaid utilities for this tenancy, consisting of \$1,317.68 in outstanding hydro bills and \$647.33 in outstanding water bills. The Landlord submitted two city water bills and four pages of hydro bills into documentary evidence.

The Tenants argued that the hydro bill was in their name and that these bills had already been paid in an account in their name.

The Landlord testified that the Tenants did put the hydro bill in their name until mid-February 2020, and that the bills they are claiming for were for the period between September 2019 to February 6, 2020 for the hydro and the full tenancy for the water.

The Landlord testified that they are also claiming for the recovery of a \$156.45 Strata fine they received for the removal of garbage left in a common area by the Tenants. The

Landlord testified that the Tenants had placed a tent in a common area during their tenancy and that they were several other garbage items around that Tenant. The Landlord testified that the Tenants had been warned to remove the tent several times but refused. Eventually, the Strata removed the tent and surrounding garbage, fine the Landlord for the costs of the removal. The Landlord submitted a copy of the bill from the strata into documentary evidence.

The Tenants testified that they saw the tent and the garbage on the property but that it was there when they moved and did not belong to them.

Analysis

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

Section 26(1) of the *Act* states that a tenant must pay the rent 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 Landlord's testimony, supported by their documentary evidence, that the rent has not been paid in full, and that there is a total of \$13,890.00 outstanding in rent due for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$13,850.00, comprised of \$150.00 for October 2019, \$1,900.00 for November 2019, \$1,900.00 for December 2019, \$1,900.00 for January 2020, \$1,900.00 for April, \$900.00 for May 2020, \$1,900.00 for June 2020, \$1,400.00 for July 2020, and \$1,900.00 for August 2020. I grant permission to the Landlord to keep the \$950.00 security deposit they are holding for this tenancy, in partial satisfaction of this award.

I also accept the Landlord's testimony supported by their documentary evidence that the utility payment due under this tenancy agreement have not been paid for this tenancy. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,965.01, consisting of \$1,317.68 in outstanding hydro bills, and \$647.33 in outstanding water bills, in the full recovery of the outstanding utilities for this tenancy.

As for the Landlord's claim for the recovery of the Strata fine they received during this tenancy, during these proceedings, the parties, in this case, offered conflicting verbal testimony regarding who owned the tent the Landlord was fined for having on the property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that is the Landlord.

I have reviewed all of the evidence submitted to these proceedings by the Landlord, and I find that there is insufficient evidence, to satisfy me, that the tent and garbage in question was the property of these Tenant's or that these Tenants had brought these items on to the property. In the absence of sufficient evidence to prove that these items belonged to these Tenant, I must dismiss the Landlord's claim recovery of the Strata fine.

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.

Overall, I grant the Landlord a monetary order of \$14,965.01, consisting of \$13,850.00 in outstanding rent, 1,965.01 in the recovery of the unpaid utilities, \$100.00 in the recovery of the filing fee for this hearing, less the \$950.00 security deposit the Landlord is 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 **\$14,965.01**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: December 16, 2020

Residential Tenancy Branch