



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which hearing lasted approximately 64 minutes. The two landlords, male landlord ("landlord") and "female landlord," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The female landlord confirmed that she was the owner of the rental unit and that the landlord had permission to speak on her behalf at this hearing (collectively "landlords"). The tenant confirmed that she had permission to represent the male tenant, who is her boyfriend, at this hearing (collectively "tenants").

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and both landlords were duly served with the tenants' evidence.

Both parties affirmed that they were ready to proceed with the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018 and ended on April 20, 2020. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. No security deposit or pet damage deposits were required by the landlords, so none were paid by the tenants. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. No move-in or move-out condition inspection reports were completed for this tenancy.

The landlords seek a monetary order of \$7,375.21 plus the \$100.00 application filing fee. The landlords provided a monetary order worksheet indicating that there was \$5,358.19 in unpaid rent and utilities and \$2,017.02 for repairs, cleaning, painting and other costs. The landlord also submitted a more detailed handwritten monetary breakdown.

The landlord stated the following facts. The tenants owe rent and utilities that were not paid from March to May 2020, totalling \$5,358.19. The landlords are seeking May 2020 costs because they had to clean and repaint the unit after the tenants moved out, and no notice was provided by the tenants that they were vacating the rental unit. The tenants damaged the rental unit during their tenancy, they did not keep it hygienic or clean, and they did not comply with the renovation and painting agreement, costing the landlords \$1,008.51. The landlords also seek other losses of \$1,008.51. The landlords submitted evidence, including text messages, photographs, invoices, receipts, and utility bills. The tenant agreed in her text messages to the landlords, that she owed money for rent and utilities. Both parties entered into a painting agreement, where the landlords agreed the tenants could move in early and paint the rental unit in lieu of paying any

security or pet damage deposits. The landlords ended up repainting the entire rental unit after the tenants moved out because the tenants did not do a good painting job, they left “hair and other physical debris embedded in the paint,” and the landlords only charged them for painting, not any labour costs. The tenants caused problems because they were “headstrong,” they were unwilling to mediate with the landlords, they tried to serve the female landlord’s husband with RTB paperwork while he was in the ICU of the hospital, and they wanted the landlords to take away their eviction notice.

During the hearing, the tenants agreed to pay a total of \$4,055.86 of the \$7,375.21 claimed by the landlords. The tenant confirmed that the tenants agreed to pay \$2,900.00 total for rent from March to April 2020, \$600.17 for hydro utilities (\$334.08, \$234.77, and \$31.32 of the \$99.52 claimed), \$198.67 for gas utilities (\$82.17, \$90.50, and \$26.00 of the \$39.00 claimed), \$106.52 for City utilities (\$3.26, \$51.63, and \$51.63), \$18.00 (\$6.00 and \$12.00) for dump fees in April 2020, and \$232.50 to clean the rental unit. The pro-rated amounts above are related to deductions made by the tenants for May 2020, when they were not living in the rental unit.

The tenants dispute the remainder of the landlords’ application. The tenant stated that the tenants were not willing to pay for May 2020 rent, or utilities because they moved out in April 2020 and they were not living in the rental unit during May 2020. The tenant explained that she left a letter, dated March 27, 2020, in the female landlord’s mailbox on March 28, 2020, that the tenants would be vacating the rental unit in April 2020. The landlords denied receipt of this letter, stating that the female landlord’s husband passed away that day and there were lots of people around, but nothing was received from the tenants. The tenant maintained that she was not willing to pay for painting costs to the landlords because she painted the unit when moving in, the landlords did not have any issue with her painting until they moved out and repainted for new tenants, and the tenants were never reimbursed for cleaning and painting they did when they moved in and the former tenants moved out. She confirmed that she was also not willing to pay for printer and ink costs from the landlords.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$4,055.86 for rent, utilities, cleaning, and dump fees. The tenants agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$3,319.35 without leave to reapply.

Damages and Other Costs

I find that the landlords did not sufficiently prove their claim, failing to properly explain the photographs, receipts, invoices, bills, and other documents that the landlords submitted for the hearing. The landlords submitted hundreds of pages of documents, particularly text messages between the parties. The landlord did not go through the above documents in detail during the hearing. He simply told me to "scroll through" all of the information myself. He did not even indicate what amounts he was seeking for each item. I repeatedly notified the landlord during the hearing that the landlords had the burden of proof, on a balance of probabilities, to prove their claim. I informed him that he could present his claim, however he chose to do so, and I provided him with ample time and opportunity to do so. I notified him of the above four-part test during the hearing. The landlord spoke for the majority of the hearing time at approximately 34 minutes, as compared to the tenant at 18 minutes. I asked the landlord questions, but he still failed to go through these documents during the hearing.

I find that the landlords failed to indicate the condition of the rental unit when the tenants moved in or out. No move-in or move-out condition inspection reports were completed for this tenancy. Therefore, I find that the landlords cannot sufficiently prove what damages were caused by the tenants and what damages were existing prior to their tenancy beginning. The tenants disputed the landlords' claims for damages, painting and other costs. I also note that the landlords did not indicate when the work was done, what was paid, when it was paid, how it was paid, or any other such information.

I awarded the landlords \$18.00 for dump fees and \$232.50 for cleaning, totalling \$250.50, as the tenants agreed to pay the above amounts during the hearing.

Therefore, the landlords' claims for "other related costs" of \$1,766.52 including painting, keys, security, and printer, are all dismissed without leave to reapply.

Rent and Utilities

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

As noted above, I awarded \$3,805.36 of the \$5,358.19 total claimed by the landlords for rent and utilities, as the tenants agreed to pay the above amounts. The remainder of the landlords' claim of \$1,552.83 for rent and utilities is dismissed without leave to reapply.

I accept the tenant's testimony that she provided sufficient one-month written notice on March 28, 2020 to the landlords, of the tenants' intention to vacate the rental unit at the end of April 2020, by leaving a copy in the landlords' mailbox.

I dismiss the landlords' application for \$102.83 for utilities, without leave to reapply. The landlord did not explain or go through the hydro, gas or city utility bills during the hearing. I find that the tenants are not responsible for these costs for May 2020, when they were not living in the rental unit.

I dismiss the landlords' application for May 2020 rent loss of \$1,450.00 without leave to reapply. The tenants did not live in the rental unit during May 2020. The landlords did not indicate if or when the unit was re-rented, when or if any advertisements were posted, or when or if any showings were done. The landlords did not indicate why it took so long to clean or repair the rental unit after the tenants vacated on April 20, 2020, or why they were unable to re-rent the unit for May 2020, if they did.

As the landlords were mainly unsuccessful in this application, except for what the tenants agreed to pay, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$4,055.86 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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 17, 2020

Residential Tenancy Branch