



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. this date concerning an application made by the landlord seeking a monetary order for damage to the rental unit; a monetary order for unpaid rent or utilities; an order permitting the landlord to 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 with a witness. The landlord gave affirmed testimony, but the witness did not testify or take part in the hearing. 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.

The landlord testified that the tenants were served with the Application for Dispute Resolution, notice of this hearing and evidence (the Hearing Package) on September 16, 2020 and the landlord has provided 2 Registered Domestic Customer Receipts addressed to the 2 tenants as well as a Canada Post cash register bearing that date and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- 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 month-to-month tenancy began on March 6, 2015 and ended on September 30, 2020. Rent of the amount of \$900.00 was originally payable on the 1st day of each month, but was increased over time to \$960.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenants failed to pay rent for the month of September, 2020 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and was successful in obtaining an Order of Possession effective September 30, 2020. The resulting Decision dated September 1, 2020 did not include a monetary order in favour of the landlord for the unpaid rent, and the landlord seeks \$960.00 for September rent.

The landlord also testified that after the tenants vacated, they allowed trespassers to stay, and the landlord required police assistance to remove them.

The landlord does not reside in the same City as the rental unit, and it was heart-breaking to see the damage caused by the tenants. The landlord claims \$2,400.00, being 80 hours at \$30.00 per hour for his time talking to the Residential Tenancy Branch Information Officers, driving back and forth, and testified that he makes \$30.00 per hour, and had to take time off work. The trip takes 2 hours each direction, and the landlord also claims \$1,600.00 for travel time and fuel. A spreadsheet setting out the expenses claimed and hours spent has been provided for this hearing.

The landlord also claims \$7,608.30 for a restoration company to remove garbage and clean the rental unit. Photographs at the end of the tenancy have been provided for this hearing, and the landlord testified that it took a crew of 6 guys and the specialists in drug removal to complete the job. The tenant's life was threatened and could not attend without police presence. It took 3 truck bins to empty the rental unit, and a receipt has been provided for this hearing.

The landlord also testified that he had a security system installed in 2009 when he purchased the rental home. At the end of the tenancy the tenants had ripped it all apart. The landlord claims \$1,187.90 to repair it, and a receipt has been provided for this hearing.

The landlord also claims \$80.62 to replace deadbolts and testified that the back door lock was glued shut so that it had to be removed and replaced. The tenants had changed the front door lock, and the landlord has no key.

The landlord did not re-rent and testified that he couldn't afford to renovate so had to sell the rental home. The landlord claims \$15,000.00 for loss of revenue on the sale of the home and has provided a letter from a realtor estimating the market value and value with the damages. It states, in part, that the market value of the home in its poor state was \$149,900.00, and it sold for \$140,000.00. It also states that had the home been in average to good condition, it could have garnered an estimated sale price of approximately \$175,00.00. The landlord testified that there were some unseen things that the landlord didn't know about and was not related to this tenancy, causing the landlord to drop the price another \$5,000.00.

The landlord received a forwarding address of the tenants in a text message on November 29, 2020, however 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 landlord's claim.

Analysis

Firstly, I found it necessary to review the Decision from the September 1, 2020 hearing to ensure that I do not make any findings of fact or law that have already been adjudicated upon. In that Decision, the Arbitrator noted that the tenants agreed to pay rent for the month of September, 2020, and I accept the undisputed testimony of the landlord that the tenants did not do so. I find that the landlord has established a claim of **\$960.00** for unpaid rent.

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed the spreadsheet indicating hours and expenses claimed by the landlord, and I note that most of the \$2,400.00 claim is for inspections and preparing for a hearing, which are not permitted under the *Act*. It also shows \$50.00 per hour for 8

trips to the City in which the rental unit is located, and I am not satisfied that the landlord is entitled to recovery of \$50.00 per hour.

I have reviewed all of the evidentiary material, and I am satisfied that, considering the photographs and the receipts, the landlord has established claims of **\$7,608.30** for the restoration company, and **\$1,187.90** for the security system, and **\$80.62** for locks.

The landlord also claims \$15,000.00 for losses caused by the tenants' failure to maintain the rental unit when the house sold. The letter from the Realtor provided by the landlord for this hearing states that the market value of the home in its poor state was \$149,900.00, and it sold for \$140,000.00. It also states that had the home been in average to good condition, it could have garnered an estimated sale price of approximately \$175,00.00. The landlord testified that there were some unseen things that the landlord didn't know about and was not related to this tenancy, causing the landlord to drop the price another \$5,000.00. A landlord must take into consideration wear and tear for a 5 year tenancy. I am not satisfied that once the garbage was removed and the unseen issues that the landlord had not been aware of causing the landlord to reduce the price, the loss was entirely the fault of the tenants, and I dismiss the landlord's \$15,000.00 claim.

The landlord testified that he received a forwarding address of the tenants in a text message, which is not a method permitted by the law. The tenants have 1 year from the date the tenancy ended to provide the landlord with a forwarding address in one of the following ways:

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Since the tenants have not done so, the landlord may keep the security deposit. If the tenants provide the landlord with a forwarding address in writing, using a method as described above, the landlord will have 15 days to return the security deposit or make an Application for Dispute Resolution claiming against it.

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

Conclusion

For the reasons set out above, 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 **\$9,936.82**.

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: December 27, 2020

Residential Tenancy Branch