



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

On August 26, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord’s Application was originally set down for a hearing on November 24, 2020 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated November 24, 2020. This Application was then set down for a final, reconvened hearing on February 8, 2021, at 11:00 AM.

The Landlord attended the final, reconvened hearing; however, neither Tenant attended at any point during the 27-minute teleconference. All in attendance provided a solemn affirmation.

During the original hearing, I was satisfied that the Notice of Hearing packages were served to the Tenants by hand on September 5, 2020. As well, I was satisfied that the only evidence of the Landlord’s that would be considered was the documentary evidence that was served with the Notice of Hearing packages. Finally, I was also satisfied that the claims for monetary compensation for outstanding rent and utilities up until September 2020 would be addressed in this Application only, and the Landlord’s claims for damages to the rental unit have been **dismissed with leave to reapply**. The Landlord is at liberty to reapply for the damages to the rental unit in a new and separate Application.

Furthermore, as the Tenants’ evidence was not served to the Landlord for this hearing, I have excluded the Tenants’ evidence and it will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

At the original hearing, all parties agreed that the most current tenancy agreement started on June 20, 2020 and ended when the Tenants gave up vacant possession of the rental unit on September 30, 2020. Rent was established at \$1,577.48 per month and was due on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$600.00 were also paid. A copy of the signed tenancy agreements was submitted as documentary evidence.

All parties also agreed that neither a move-in inspection report nor a move-out inspection report were completed. As well, this Application was made while the Tenants still occupied the rental unit, and to date, the Tenants have not provided a forwarding address in writing.

During the original hearing, the Tenants indicated that they understood that the Landlord's Application was for rental arrears and past utilities owing, and that the Landlord's claims for damages were dismissed with leave to reapply. As such, only the Landlord's claims for rent and utilities owing will be addressed in this Application.

At the reconvened hearing, the Landlord advised that he is seeking compensation in the amounts of **\$152.58** for utilities stemming from January 2019, **\$215.41** for utilities stemming from April 2020, **\$305.82** for utilities stemming from July 2020, **\$108.75** for utilities stemming from August 2020, and **\$345.99** for utilities stemming from September 2020. He stated that according to the tenancy agreement, the Tenants owed 75% of the utilities; however, they did not pay these bills. He did not submit any documentary evidence to support the cost of the utilities.

In addition, he advised that he is seeking compensation in the amount of **\$498.98** for the balance of April 2020 rent. He stated that the Tenants only paid \$1,078.50 at the end of April 2020.

As well, he advised that he is seeking compensation in the amount of **\$1,477.48** for the balance of July 2020 rent. He stated that the tenancy agreement indicated that the Tenants would pay an extra \$400.00 per month if they had an occupant living with them in the rental unit. In June 2020, he discovered that the Tenants moved in an occupant

without his consent, so he should be owed this extra fee. In addition, the Tenants did not pay any rent for April 2020, but the Landlord did receive \$500.00 from the government on the Tenants' behalf.

The Landlord advised that he is seeking compensation in the amount of **\$1,477.48** for the balance of August 2020 rent. Again, the Tenants had their occupant living in the rental unit for this month. Furthermore, the Tenants did not pay any rent for August 2020, but the Landlord did receive \$500.00 from the government on the Tenants' behalf.

Finally, the Landlord advised that he is seeking compensation in the amount of **\$1,977.48** for September 2020 rent, which was not paid at all. He stated that the Tenants still had the occupant living with them for this month and they did not pay any rent for September 2020. Moreover, the Landlord did not receive \$500.00 from the government on the Tenants' behalf for this month.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. As the Landlord has not applied to retain the security deposit or pet damage deposit, and as the Tenants have not provided a forwarding address in writing to the Landlord, the Landlord must hold these deposits in trust until a forwarding address in writing is provided by the Tenants.

If the Tenants provide a forwarding address in writing, Section 38(1) of the *Act* requires the Landlord, within 15 days from the date of receiving this forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*. Bear in mind that the pet damage deposit may only be claimed against for damage due to pets. Should the Tenants not provide a forwarding address in writing within a year from the end of the tenancy, then the Landlord may simply keep the deposits pursuant to Section 39 of the *Act*.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to

provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, 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.

Regarding the Landlord’s request for compensation for utilities owed, while the Landlord provided undisputed testimony regarding the cost of the Tenants’ share of the utilities, I find it important to note that he has provided insufficient evidence to support the actual cost of the utilities for the requested months. As such, I do not find that the Landlord has sufficiently corroborated the amount that he is claiming. Consequently, I dismiss his claims for utilities in their entirety.

With respect to the Landlord’s claims for compensation for the rental arrears, based on the undisputed evidence before me, I am satisfied that the Landlord has provided sufficient evidence to support his claims. As such, a monetary award will be granted as per below.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
April 2020 rental arrears	\$498.98
July 2020 rental arrears	\$1,477.48
August 2020 rental arrears	\$1,477.48
September 2020 rental arrears	\$1,977.48

Recovery of Filing Fee	\$100.00
Total Monetary Award	\$5,531.42

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$5,531.42** 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: February 8, 2021

Residential Tenancy Branch