



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent on October 26, 2021. The tenants disputed being served with the materials but confirmed that they were later provided the materials and had an opportunity to review the contents. The landlord confirmed receipt of the tenants' materials. Based on the testimonies I find that there are no issues of procedural fairness or prejudice and that each party has been sufficiently served with the respective materials in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

There was a previous hearing regarding this tenancy under the file number on the first page of this decision. This periodic tenancy began on October 15, 2018 and ended on October 31, 2020. A copy of the tenancy agreement was submitted into evidence. The agreement provides that rent is \$1,500.00 payable on the first day of each month. Electrical utilities are not included in the monthly rent. The tenants paid a security deposit of \$750.00 which is still held by the landlord.

In the previous hearing the arbitrator found that the attempt by the landlords to increase the monthly rent was invalid and “the amount of rent the landlords were legally entitled to receive from the tenants remained at \$1,500.00 per month”.

The parties agree that for the period of April 2020 through August 2020 the landlords received rent in the amount of \$500.00 per month on behalf of the tenants from the provincial government rent subsidy program. The parties agree that no other amounts were paid for that period.

The tenants submit that there was an oral agreement with one of the named landlords, JM that no additional amount of rent was payable during this time. The landlords submit that there was no such agreement and that there is a rental arrear. The landlords calculated the arrear based on the erroneous monthly rent amount in their application and testified that based on the \$1,500.00 monthly rent the total arrear is \$5,000.00.

The landlord also submits that the tenant was responsible for paying a portion of the utilities for the property and that the amount of outstanding utility payments for the period of June 2019 to May 2020 is \$905.19. The tenants dispute this figure and says that the agreement was for utilities to be split evenly between the parties. The tenants say that throughout the course of the tenancy the landlords kept changing the portion of the utilities they were charged increasing their portion to 75% of the charges for the property. The tenants submit that these changes in the amount of utilities payable were not authorized and that there is in fact an overpayment of utilities and that there should be a reimbursement in the amount of \$5,033.42.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties disagree on many of the aspects of this tenancy. As noted in the previous decision there is a clear acrimonious relationship between the parties. The parties gave conflicting testimony regarding agreements on the amount of monthly rent payable during the months of April 2020 to August 2020 and the percentage of the utilities payable by the tenants to the landlords. While both parties referenced agreements made regarding these details of the tenancy there is little documentary evidence to support their respective submissions.

I accept, based on the written tenancy agreement and in accordance with the decision of October 9, 2020 that the monthly rent for this tenancy was \$1,500.00. I accept the landlords' submission that rent was payable in full for the period of April 2020 to August 2020. While the tenants claim that there was an agreement that no amount was payable for that period, I find little evidence to support their position. There is no signed agreement, correspondence or documentary materials showing that any such offer was made by either of the named landlords. I accept the landlord's testimony that no such offer was extended and that rent was payable in full. I accept the parties' undisputed evidence that the only amount that was paid for that period was the \$500.00 rental subsidy from the provincial government. I accept the landlords' evidence that the total arrear for that period is \$5,000.00 and issue a monetary award in that amount accordingly.

I find little evidence in support of the landlord's position that there is a utility payment arrear for this tenancy. The tenancy agreement signed by the parties simply notes that electrical utilities are not included in the monthly rent but is silent on whether the tenant is required to pay any amount to the landlord or how such an amount will be calculated. I do not find the landlords' submission that the tenants are required to pay 75% of utility

overage in any of the documentary materials other than the landlord's demand letter of August 15, 2020. The tenants dispute that there is any agreement to pay anything more than what they have already, voluntarily paid during the course of the tenancy.

In the absence of documentary evidence such as an agreement signed by the parties or correspondence referencing and confirming the details of the agreement between the parties, I am not satisfied that there is any basis for the landlord to demand additional utility payments. I find that the landlords have not met their evidentiary burden on a balance of probabilities and accordingly dismiss this portion of the landlord's application.

As the landlords were somewhat successful in their application I allow them to recover their filing fees from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlords' favour

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$4,350.00, allowing them to recover the unpaid rent and filing fee and to retain the security deposit for this tenancy. 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 1, 2021

Residential Tenancy Branch