



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “*Act*”) for a monetary order for unpaid rent and utilities, for a monetary order for damages, permission to retain the security deposit and for an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on November 3, 2020, two Canada Post tracking number were provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was 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 monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on June 1, 2019, that rent in the amount of \$2,650.00 was to be paid by the first day of each month, and the Landlord had been given a \$1,325.00 security deposit and a \$1,325.00 pet damage deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that there had been a previous hearing with the residential Tenancy Branch regarding this tenancy and that in the decision dated February 3, 2020, the Tenants had been found to have caused a flood in the rental unit. The Landlord submitted a copy of the Decision from the previous hearing into documentary evidence.

The Landlord testified that at the time of the previous hearing, they did not have all of the repairs completed from the flood and that they are now seeking to recover their remaining costs for flood renovations that had not been included in those original proceedings. The Landlord testified that they are claiming \$1,890.00 for insulation and ceiling repair to the lower rental unit that had received damage due to the flood in the Tenants' rental unit. The Landlord submitted a copy of the repair invoice into documentary evidence.

The Landlord testified that the Tenants moved out of the rental unit on August 31, 2020, without paying the last month's rent and utility bills. The Landlord testified that they are requesting to recover the unpaid rent for August 2020, in the amount of \$2,650.00, and the unpaid gas, water and electricity bills in the amount of \$653.48. The Landlord submitted two electricity bills, four gas bills and two water bills into documentary evidence.

The Landlord testified that they are also requesting \$100.00 for a carpet demo agreement that had been included in the tenancy agreement. The Landlord testified that they had contracted with the Tenant that they would remove the bedroom carpet at the end of this tenancy. The Landlord testified that the Tenant had removed the carpet in question but that there was additional clean up from the carpet removal that had not been completed. The Landlord referred to the attached addendum to the tenancy agreement already in evidence.

Analysis

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

I accept the undisputed testimony of the Landlord that the Tenants did not pay the rent for August 2020 or the utilities as required by their tenancy agreement. Section 26 of the Act states the following:

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.*

I find that the Tenants' breached section 26 of the Act when they did not pay the rent and utilities for this tenancy in accordance with their tenancy agreement. I also find that the Landlord has provided sufficient evidence to prove the value of the unpaid rent and utilities for this tenancy. Therefore, I find that the Landlord has established an entitlement to the recovery of the outstanding rent for August 2020, in the amount of \$2,650.00 and the outstanding utility bills in the amount of \$653.48.

As for the Landlord's claim for \$1,890.00 in renovation repairs due to the flood cause by the Tenants'. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the February 4, 2020 decision issued by the Residential Tenancy Branch, and I find that these Tenants' were found in that decision to have caused the flood on August 9, 2019. I accept the undisputed testimony of the Landlord that the invoice I have before me is for repairs required due to the August 9, 2019 flood. Therefore, as it has already been determined that these Tenants caused this flood, I find that the Landlord has established an entitlement to the recovery of their costs for this repair. Accordingly, I award the Landlord the recovery of the \$1,890.00 repair bill that I have before me.

Finally, the Landlord has claimed for \$100.00 in carpet demo (removal) costs. I accept the testimony of the Landlord that the Tenants had, in fact, removed the required carpet at the of this tenancy. I have also reviewed the clause in the tenancy agreement addendum that requires the carpet removal, and I find that there is no mention of the requirement for the Tenants to provide the "additional clean up" from the carpet demo that the Landlord is requesting in this claim. Therefore, I dismiss this portion of the Landlord's claim.

Additionally, 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 partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$5,293.48; consisting of \$2,650.00 in outstanding rent, \$653.48 in outstanding utility bills, \$1,890.00 in repairs and \$100.00 to recover the filing fee for this hearing.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$5,293.48**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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 10, 2021

Residential Tenancy Branch