



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

Landlord SD and tenant JE attended the hearing. Witness SM for the tenant also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The tenant confirmed receipt of the application and evidence (the materials) and affirmed he did not serve evidence. Based on the testimonies I find the tenant was served with the materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing both parties expressly affirmed they understand it is prohibited to record this hearing and that when one person is speaking, the other can not interrupt.

Preliminary Issue – Application for a monetary order

The landlord did not submit into evidence a monetary order worksheet. The landlord affirmed she applied for compensation for unpaid rent for the months of October, November and December 2020, unpaid utilities, compensation under section 67 for the rental unit lock replacement and for the payment of the security deposit (the deposit) not paid by the tenant.

The tenant affirmed he is aware the landlord is applying for a monetary order for unpaid rent for the months of October, November and December 2020, unpaid utilities, compensation for the lock replacement and for the payment of the deposit.

Per section 59(2)(b) of the Act, I accept the landlords' application for compensation under sections 26 and 67 of the Act.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate their application.

Both parties agreed the periodic tenancy started on September 01, 2020. Monthly rent in the amount of \$575.00 was due on the first day of the month. The tenant rented a bedroom in a house and shared the commons spaces with two other tenants. The tenancy agreement, signed by co-tenants TR, DM and the applicant, was submitted into evidence.

The landlord affirmed she did not receive a deposit. The tenant stated he paid the deposit in the amount of \$280.00 to the tenant that lived in the rental unit before he moved in.

Witness SM testified he lived in the rental unit from January to September 2020 and tenant JE moved in when he moved out. SM said he observed tenant JE pay the deposit to another tenant in the amount of \$275.00 in the last week of September 2020. At a later point witness SM corrected his testimony to "in the last week of August 2020".

The landlord affirmed she never asked or authorized new tenants to pay the deposit to previous tenants and she did not receive a deposit from tenant JE.

The landlord affirmed on September 23, 2020 she conducted a rental unit inspection and concluded the tenant abandoned the rental unit. On September 30, 2020 the landlord removed the tenant's belongings from the rental unit and changed the front door lock. The tenant did not return the keys and did not give a notice to end periodic tenancy.

The tenant stated he left the rental unit on September 25, 2020, his belongings were removed by the landlord from the rental unit on September 30, 2020 and he returned the keys to another tenant on October 12, 2020.

The landlord testified she could only re-rent the rental unit in March 2021. The landlord is claiming for loss of rental income for October, November and December 2020 in the total amount of \$1,725.00 (\$575.00 per month). The tenant said he did not give notice to end monthly tenancy because the landlord breached the tenancy agreement and a new tenancy started in November 2020.

Both parties agreed the tenancy agreement required the tenants to pay the utilities. The landlord is claiming for unpaid electricity in the amount of \$81.76 and gas in the amount of \$83.25 from September 01, 2020 to December 31, 2020. The landlord submitted into evidence a gas bill in the total amount of \$31.30, due on November 11, 2020, for the gas used at the property from September 21, 2020 to October 20, 2020. The landlord also submitted a proof of payment of an electricity bill on November 17, 2020 in the amount of \$81.86. The landlord said the average amount for gas and for electricity is \$30.00 per month for each of these utilities.

The tenant stated the two other tenants informed him they paid for the gas and electricity bills from September 01 to October 31, 2020. The landlord laughed when the tenant was speaking. I warned the landlord that she must be respectful at all times and she may be muted if she is unrespectful one more time, per Rule of Procedure 6.10.

As the tenant did not return the rental unit's keys the landlord paid \$80.00 to replace the rental unit's front door lock and is claiming for reimbursement.

Analysis

Section 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Unpaid rent

Based on the tenancy agreement and both parties' testimony, I find there was a periodic tenancy in place and the tenant was obligated to pay monthly rent in the amount of \$575.00 on the first day of each month. The tenant paid for September 2020 rent and the parties agree the unit was vacated at the end of September 2020.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

The tenant did not end the tenancy pursuant to Section 45(1) of the Act, which states:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant did not provide a notice to end tenancy he owes the landlord \$575.00 for October 2020 rent.

As the tenancy agreement was periodic, the landlord is not entitled to loss of rental income for the months of November and December 2020.

Utilities

Based on the tenancy agreement and both parties' testimony, I find that the tenancy agreement required the tenant to pay gas and electricity. The tenant did not provide any documentary evidence to support his claim that the utilities bills were paid. The tenant's witness did not provide testimony about the payment of utilities bills.

Based on the landlord's testimony, I find, on a balance of probabilities, the tenant breached the tenancy agreement by not paying for utilities.

The gas bill due on November 11, 2020 is for gas used from September 21 to October 20, 2020. Based on the landlord's testimony and the gas bill, I find it reasonable to grant the landlord compensation in the amount of \$25.00 for the gas bill for the month of September 2020.

I am not convinced by the vague testimony provided by the landlord that the electricity bill is on average \$30.00 per month. The landlord did not provide any documentary evidence to support her claim that the electricity bill is on average \$30.00 per month. The proof of payment of an electricity bill submitted into evidence is of no relevance, as it does not indicate how much electricity was used.

Thus, I dismiss the landlord's claim for unpaid electricity.

Lock replacement

Section 37(2) of the Act states:

- (2) When a tenant vacates a rental unit, the tenant must:
 - give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The tenant testified he gave the key to another tenant and not the landlord. I find the tenant breached section 37(2) of the Act by not returning the front door key and the landlord incurred a loss of \$80.00 to replace the front door lock.

I award the landlord \$80.00 in compensation for this loss.

Deposit

The landlord is claiming for the payment of the deposit and the tenant is claiming for the return of the deposit.

The tenant and the witness gave inconsistent testimony of paying a deposit to a vacating tenant. Per section 17 of the Act, only the landlord has the authority to require a deposit and the landlord denies receiving one from the tenant. The tenant has not convinced me that the landlord collected a security deposit and holds it in trust.

Section 20(a) of the Act states a landlord must not require a security deposit at any time other than when the landlord and the tenant enter into the tenancy agreement. As this tenancy is over, the landlord is not entitled to collect a deposit.

I dismiss the landlord's application for a monetary order for the deposit.

Filing fee and summary

As the landlords were partially successful in this application, the landlords are entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
October 2020 rent	575.00
Utilities (gas)	25.00
Lock replacement	80.00
Filing fee	100.00
Total	780.00

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlords a monetary order in the amount of \$800.00.

The landlords are provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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: March 23, 2021

Residential Tenancy Branch