



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on March 9, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. However, the Tenants did not. The Landlord applied for, and was granted an order for substituted service on November 19, 2020. In this decision, the Landlord was given permission to serve one of the Tenants by email. The Landlord emailed that Tenant with the Notice of Hearing and evidence on November 26, 2020. Pursuant to that decision, I find that Tenant is deemed to have received that package, via email, 3 days after it was sent, on November 29, 2020.

Following this, the Landlord applied for a second order for substituted service, and was granted permission to serve the second Tenant by email. The Landlord sent the second Tenant the Notice of Hearing and evidence by email on December 7, 2020. I find that Tenant was deemed to have received that email 3 days after it was sent, on December 10, 2020.

I find the Landlord sufficiently served both Tenants with his application and evidence.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that monthly rent was set at \$1,700.00, due on the first day of the month. The Landlord holds a security deposit in the amount of \$850.00. The tenancy started on April 18, 2020, and was set for a 1-year fixed term, expiring on April 30, 2021. The Tenants moved out of the rental unit at the end of October 2020, without paying rent for that month, and without cleaning up before they left.

The Landlord stated that he is seeking the following 3 items:

- 1) \$1,700.00 – October 2020 rent

The Landlord stated that the Tenants lived in the rental unit for 29 days of this month, and failed to pay any rent.

- 2) \$892.50 – Liquidated damages

The Landlord pointed to the tenancy agreement which shows that the Tenants agreed to pay a liquidated damages clause in the amount of ½ month's rent for breach of the fixed term lease. The Landlord provided an invoice showing it cost him one half month's rent, plus tax, to an agent to find new tenants. The Landlord stated that this was a genuine pre-estimate of the costs to re-rent, and is not intended to be punitive.

3) \$150.00 – Move-out cleaning

The Landlord stated that after the Tenants moved out, the unit was not properly cleaned, and as a result, he had to hire a cleaner. An invoice for \$150.00 was provided for cleaning services rendered on November 2, 2020, for general cleaning of the floors, the walls, and the kitchen/bathroom. The Landlord stated there was dirt and debris scattered around the unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

With respect to the first item on the Landlord's application, I note that Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

In this case, I find there is no evidence that the Tenants had any right to withhold rent, and given they lived in the unit for the vast majority of October 2020, I find they are liable for this entire month's worth of rent, \$1,700.00.

With respect to the next item, I note that Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the Tenant. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the Landlord's request to recover liquidated damages of \$892.50, as this is the direct cost the Landlord incurred to re-rent the unit. I award this item, in full.

With respect to the cleaning costs, I note that Residential Tenancy Policy Guideline #1 states the following:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit

I accept the undisputed testimony that the Tenants failed to clean after they moved out, and that it cost \$150.00 to hire cleaners, as indicated in the invoice. I accept the Landlord's statements that the condition of the rental unit at the end of the tenancy does not comply with reasonable cleanliness and sanitary standards. As such, I find the Tenants are responsible for the above invoice, as it is largely related to cleaning. I award \$150.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Lost Rent	\$1,700.00
Liquidated Damages	\$892.50
Cleaning costs	\$150.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,842.50
LESS: Security Deposit	\$850.00
Total Amount	\$1,992.50

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,992.50**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with

this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 09, 2021

Residential Tenancy Branch