



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, MNDCL**

Introduction

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

- An order of possession pursuant to section 55; and
- A monetary award for unpaid rent, damages and loss pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on February 17, 2021 and their subsequent amendment to their application and additional evidence on April 21, 2021. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's first package on February 22, 2021 and their subsequent materials on April 26, 2021, five days after the mailing of each, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified that the tenant has moved out of the rental unit and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Background and Evidence

This periodic tenancy began in April 2019. Monthly rent was \$800.00 payable on the first of each month. A security deposit of \$375.00 and pet damage deposit of \$125.00 were collected and still held by the landlord.

The landlord submits that there is a rental arrear of \$4,000.00 as at the date of the hearing. The landlord submitted copies of account statements as evidence of the arrear.

There was a previous hearing under the file numbers on the first page of this decision in which the landlord was granted an Order of Possession. The tenant failed to vacate in accordance with the Order and the landlord incurred costs to enforce the Order through the courts. The landlord submits that the total amount incurred for enforcing the Order and obtaining vacant possession is \$1,365.12.

The landlord submits that the rental unit required cleaning as a result of the tenancy and the cost for restoring the rental unit to its pre-tenancy condition is \$496.13. The landlord submitted invoices for the cleaning costs in support of this portion of their monetary claim.

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.

I accept the undisputed evidence of the landlord that the tenant failed to pay the full rent as required under the tenancy agreement and that there is a rental arrear of \$4,000.00 as at the date of the hearing. I find the landlord's evidence by way of their testimony

and documentary materials to be sufficient to meet their evidentiary onus. Accordingly, I issue a monetary award in that amount.

I accept that the landlord incurred costs to obtain vacant possession of the rental unit due to the tenant failing to comply with the Order of Possession. I accept that the costs for enforcing the order was \$1,365.12 and issue a monetary award in that amount accordingly.

I accept the undisputed evidence of the landlord that the tenant failed to participate in a move-out inspection and left the rental unit in a state of disrepair requiring cleaning and work. I accept the evidence of the landlord including the invoices and their undisputed testimony that the total cost for cleaning and work was \$496.13 and issue a monetary award in that amount.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,361.25, allowing for the recovery of the unpaid rent, costs of enforcing an order, cleaning costs and to retain the security and pet damage deposit.

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: May 11, 2021

Residential Tenancy Branch