



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant 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 parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?
Are the landlords entitled to recover their filing fee from the tenant?

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.

The parties agree on the following facts. This tenancy began in November 1, 2019 and ended in September 2020. Monthly rent was \$1,600.00 payable on the first of each month and the Tenant was responsible for 40% of the utilities for the property.

There was a previous hearing under the file number on the first page of this decision. In that decision the landlords were permitted to retain the security deposit for this tenancy to offset a monetary award. In the earlier decision the Arbitrator found that as the tenant provided notice to end the tenancy on August 17, 2020 the corrected effective date of the notice was September 30, 2020. The landlords' claim for unpaid electrical utilities was dismissed with leave to reapply in that hearing.

The landlords submitted a copy of the electrical utility bills for the final months of the tenancy. The landlord submits that total electrical utilities owing up to September 30, 2020 is \$108.70.

Both parties submitted large volumes of documentary material pertaining to the ongoing adversarial nature of their relationship, their negative characterization of one another and the impact it had on their respective health and quiet enjoyment of the tenancy.

The landlord seeks a monetary award of \$2,000.00 from the tenant for what they characterize as emotional stress. The landlord gave lengthy rambling testimony complaining about the tenant and their experiences during the tenancy. The landlord testified that the tenant "looked at them with an angry expression" and walked away to slam a door on one occasion. The landlord submits that the tenant has reported the landlords to the municipality, had surveillance cameras positioned in the rental suite and has accused the landlords of theft without any basis. The landlord claims that the tenancy caused stress to them and seek a monetary award of \$2,000.00.

The tenant disputes the landlord's claim for damages and loss other than a portion of the electrical utilities. The tenant agrees that they owe their portion of the electrical utilities but calculate their portion to be \$78.48 based on the days that they occupied the rental suite.

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.

As noted in the earlier decision, because the Tenant provided notice to end this tenancy on August 17, 2020 the corrected effective date of the notice is September 30, 2020. The tenant was therefore obligated to pay utilities for the duration of the tenancy. It is not open for a tenant to end the tenancy earlier than the effective date of their notice under the *Act* and to discount from the monthly utility bills for the period when they were absent from the rental unit.

I am satisfied with the documentary evidence of the landlords by way of the utility bills submitted and their calculations that 40% of the electrical utilities is \$108.70. I issue a monetary award in the landlord's favour for that amount accordingly.

I find insufficient evidence in support of the balance of the landlord's claim. I find the landlords' complaints about the tenant's conduct to be hyperbolic, subjective and demonstrate no breach of any portions of the *Act*, regulations or tenancy agreement that it would give rise to a basis for an award. I find the landlords' complaints about angry expressions made by the tenant to be patently unreasonable and not something which a landlord can demand or seek a monetary award for.

I find the landlords' complaints about being reported to the municipality to be unfounded. Anyone is at liberty to report to whatever authorities they deem appropriate for perceived breaches. I find that the tenant's actions do not demonstrate any basis for a monetary award.

Based on the totality of the evidence including the written submissions and testimony of the parties I find that the landlord's complaints about the tenant to be generally exaggerated, attributes considerable motivation to perceived slights and has little air of reality. I find that the landlord had failed to meet their evidentiary onus on a balance of probabilities for their monetary claim and consequently dismiss this portion of their application.

As the landlord was not successful for the majority of their application I decline to issue an award for recovery of the filing fee.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$108.70. 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.

I dismiss the balance of the landlords' application without leave to reapply.

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 20, 2021

Residential Tenancy Branch