



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RA REALTY ALLIANCE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order for \$8,051.00 for damages to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, MH (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 9, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by each by their own registered mail package on March 11, 2021. Two registered mail tracking numbers were submitted and have been included on the style of cause for ease of reference and identified as 1 for tenant FL, and 2 for tenant MD. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. The agent stated that the forwarding address used was provided by tenant MD by phone to the landlord after the tenants vacated in February 2021. According to the Canada Post online tracking website, tenant MD had their package successfully delivered on March 15,

2021 and tenant FL did not pick up their package and it was marked as “unclaimed” and returned to sender. s

Given the above, I find tenant FL was deemed served as of March 16, 2021, which is 5 days after the registered mail package was sent pursuant to section 90 of the Act. I find this application to be unopposed by the tenants as I find the tenants were duly served under the Act. The hearing proceeded without the tenants present pursuant Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which address consequences for not attending a dispute resolution proceeding.

In addition, the agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

The agent confirmed the respective email addresses for the parties at the outset of the hearing and stated that they understood that the decision would be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants’ security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord provided a copy of the tenancy agreement evidence. A fixed-term tenancy began on January 16, 2020 and reverted to a month to month tenancy after January 31, 2021. The monthly rent during the tenancy was \$3,200.00 per month and was due on the first day of each month. The agent stated that the tenants paid a security deposit of \$1,600.00 at the start of the tenancy, which the landlord continues to hold.

The landlord’s monetary claim of \$8,051.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Unpaid January 2021 rent	\$3,200.00
2. Unpaid April to May 2020 rent arrears (Repayment Plan)	\$2,560.00
3. Loss of rent for February 1-14, 2021	\$1,600.00
4. Cleaning costs	\$591.00
5. Filing fee	\$100.00
TOTAL	\$8,051.00

Regarding item 1, the landlord is claiming for \$3,200.00 for unpaid January 2021 rent. The agent stated that the tenants vacated the rental unit on February 1, 2021, without notice under the Act and did not pay January 2021 rent.

Regarding item 2, the landlord is claiming for the Repayment Plan arrears for the rent arrears dating back to April to May 2020. The agent stated that while some rent arrears were paid, the tenants still owe \$2,560.00 in rent arrears dating back to April and May of 2020.

Regarding item 3, the landlord is claiming for loss of February 1-14, 2021 rent in the amount of \$1,600.00. The agent testified that the landlord was able to secure new tenants who moved into the rental unit effective February 15, 2021, and that the new tenants are paying the same as what the tenants paid during their tenancy and so the amount received for February 15-28, 2021 was \$1,600.00, leaving a rental loss of \$1,600.00 for February 1-14, 2021. The agent stated that due to the tenants ending the tenancy without notice, the tenants are liable for the loss of rent.

Regarding item 4, the landlord is claiming \$591.00 for the cost to clean the rental unit that the agent stated was not cleaned by the tenants before they vacated. The agent referred to the cleaning invoice submitted in evidence which matches the amount claimed. The agent also referred to many colour photos submitted in evidence, which the agent stated supports the dirty condition of the rental unit. The photos showed a dirty fridge, junk left behind, a dirty sink, garbage in bags, dirty drawers and a yard that was not clean.

The landlord is seeking to retain the tenants' security deposit towards money owing and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's monetary claim is fully successful in the amount of **\$8,051.00** as indicated above and includes the recovery of the cost of the filing fee pursuant to section 72 of the Act in the amount of \$100.00 as the landlord's application is successful. I have considered the undisputed testimony of the agent and that the application was unopposed by the tenants.

I find the tenants breached section 26 of the Act by failing to pay rent as claimed including the failure to comply with the Repayment Plan for rent arrears as claimed. I also find that the tenants breached section 45(1) of the Act by failing to provide proper written one-month notice on the landlords no later than December 31, 2021, to be able to vacate at the end of January 2021. I also find the tenants remained in the rental unit until February 1, 2021, which is one day later than the end of January 2021.

In addition, I find the tenants breached section 37 of the Act that requires the tenants to leave the rental unit reasonably clean and undamaged, less reasonable wear and tear. I find the rental unit was left in dirty condition and not reasonably clean as required by the Act.

As the landlord continues to hold the tenants' security deposit of \$1,600.00, **I authorize** the landlord to retain the tenants' full \$1,600.00 security deposit to offset the \$8,051.00 amount owed, and I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord of **\$6,451.00**.

I caution the tenants to comply with sections 26, 37 and 45(1) of the Act in the future.

Conclusion

The landlord's monetary claim is fully successful.

The landlord has established a total monetary claim of \$8,051.00 and has been authorized to retain the tenants' full security deposit of \$1,600.00, which has accrued \$0.00 in interest. The landlord has also been granted a monetary order pursuant to section 67 of the Act, in the balance owing by the tenants to the landlord of \$6,451.00.

Should the landlord require enforcement of the monetary order, the landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenants are cautioned that they can be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenants.

The tenants have been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 16, 2021

Residential Tenancy Branch