



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$6,183.86 for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for damages to the unit, site or property, and to recover the cost of the filing fee.

Landlord ML (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord 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.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 6, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on each tenant by registered mail on April 9, 2021. Two registered mail tracking numbers, one for each tenant, have been included on the style of cause and labelled 1 and 2 and the corresponding initials of the tenants, LG and CR. According to the Canada Post registered mail website, the tenants were served with their own as follows. TG had their mail redirected to their new address and delivered on April 13, 2021, while CR had their document delivered as of April 12, 2021.

Section 90 of the Act states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find that the tenants were both deemed served as of April 14, 2021 with the Notice of Hearing, application and documentary evidence. As the tenants did not attend the hearing, I consider this matter

to be undisputed by the tenants and the hearing continued without the tenants present in accordance with Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11 (Rule 6.11). The landlord 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 landlord 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 landlord confirmed they understood my direction pursuant to Rule 6.11 and did not have any questions regarding Rule 6.11.

In addition, the landlord confirmed the respective email addresses for both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to landlord and that only the decision would be emailed to the tenants.

Also, the landlord was advised that due to the Monetary Order Worksheet (Worksheet) served on the RTB and the tenants in the amount of \$10,234.92 not matching the application amount claimed of \$6,183.86 and in the interests of conducting a fair hearing, the landlord was given the opportunity to either proceed with only the \$6,183.86 claim, or deal with just the unpaid rent, loss of rent and unpaid utilities at this hearing, along with the security deposit and filing fee, and the remainder of the claim for damages and cleaning costs, I would dismiss with leave to reapply.

After careful consideration, the landlord decided to reapply for the damages and cleaning costs, which I grant the landlord liberty to reapply for and will not deal with those matters at this proceeding. I have granted the landlord leave to reapply as the landlord testified that they were unaware that they had to formally amend their claim and re-serve the tenants with an amended claim. I note that granting the landlords liberty to reapply for damages and cleaning costs, I have not extended any applicable timelines under the Act. I make this decision pursuant to section 62(3) of the Act.

In addition to the above, the landlord was advised that between this application and any future application related to this tenancy, the combined amounts may not exceed \$35,000.00, which is the limit under the *Small Claims Act*.

Issues to be Decided

- Are the landlords 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?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A 6-month fixed-term tenancy began on October 1, 2020 and was scheduled to revert to a month-to-month tenancy after 6 months. The landlord testified that the tenants vacated the rental unit on March 14, 2021 after having been served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 3, 2021 (10 Day Notice). The landlord stated that the tenants did not return the keys directly to the landlords and instead put them under the mat of the rental unit.

The landlords' monetary claim being dealt with at this hearing is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for March 2021	\$1,700.00
2. Loss of rent for April 2021	\$850.00
3. Unpaid tenants' portion of hydro utilities	\$451.05
4. Filing fee	\$100.00
TOTAL	\$3,101.05

Regarding item 1, the landlord has claimed \$1,700.00 for unpaid rent for March 2021. The landlord referred to the 10 Day Notice that the landlord stated was served on the tenants and for which the tenancy ended. The landlord also testified that the tenants failed to pay March 2021 rent and owe \$1,700.00 as a result.

The landlord stated that an incoming Condition Inspection Report (CIR) was completed at the start of the tenancy and that the tenants would not respond to several requests from the landlords to attend an outgoing CIR. As a result, I will deal with the tenants' extinguishment of their right to their security deposit later in this decision.

Regarding item 2, the landlord testified that the landlord suffered a loss of April 2021 rent as they landlord had to clean the rental unit and repair damages before they could re-rent the rental unit. The landlord stated that new tenants moved into the rental unit effective May 1, 2021. The landlord also stated that while they originally claimed for ½ of the rent for April 2021, they were not waiving any rights to the full rent lost for April 2021 if they were entitled to it under the Act.

Regarding item 3, the landlord stated that according to the tenancy agreement, the tenants' portion of the electricity/hydro utilities (hydro) was 60%, which was supported by the tenancy agreement. The landlord also presented a hydro bill dated in the amount of \$751.74 for the usage period of January 12, 2021 to March 11, 2021. The landlord stated that 60% of \$751.74 is \$451.05, which I will address later in this decision.

In terms of the filing fee, I will also address this later in this decision.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord 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, I consider this matter to be unopposed by the tenants.

Item 1 - Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

Based on the above, I find the tenants breached section 26 of the Act by failing to pay rent as required for March 2021 and therefore owe the landlords **\$1,700.00** for unpaid March 2021 rent.

Item 2 – I accept the undisputed testimony that the landlords were unable to rent the rental unit due to damage to the rental unit for the month of April 2021. I also accept the undisputed testimony of the landlord that they were able to secure new tenants effective May 1, 2021. Therefore, I find the tenants breached section 37(1)(a) of the rental unit by failing to leave the rental unit in a reasonably clean condition and undamaged, except for reasonable wear and tear based on the testimony of the landlord. I also find that the landlord is entitled for loss of the full month of rent for April 2021, and as a result, I grant the landlord **\$1,700.00** for loss of April 2021 rent.

Item 3 – While I accept that the tenants failed to pay the unpaid utilities, I find the calculation by the landlord was off by one penny. I find that 60% of \$751.74 totals \$451.04, and therefore, I find the tenants breach the tenancy agreement by failing to pay 60% of the utilities as required by the tenancy agreement. I grant the landlord **\$451.04** for the 60% of the unpaid hydro bill.

As the landlord's application was successful, I grant the landlord **\$100.00** pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of **\$3,951.04**, which is comprised of \$1,700.00 for item 1, \$1,700.00 for item 2, \$451.04 for item 3 and the \$100.00 filing fee.

I will now address the tenants' security deposit of \$850.00. I accept the landlord's undisputed testimony that the tenants failed to respond to the attempts by the landlord to schedule an outgoing CIR. Therefore, I find the tenants extinguished their rights to their security deposit pursuant to section 36(1) of the Act.

Pursuant to section 38 of the Act, as the as the landlords continue to hold the tenants' security deposit of \$850.00, which has not accrued any interest to date, I grant the landlords authorization to retain the tenants' full \$850.00 security deposit to offset the \$3,951.04 amount owing. I grant the landlords a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenants to the landlords in the amount of **\$3,101.04**.

Conclusion

The landlords' application is fully successful.

The landlords have established a total monetary claim of \$3,951.04 as described above. The landlords have been authorized to retain the tenants' full security deposit of \$850.00 including \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of \$3,101.04. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenants are reminded that they can be held liable for all costs related to enforcing the monetary order.

This decision will be sent by email to both parties.

The monetary order will be sent by email to the landlords only for service on the tenants.

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: September 2, 2021

Residential Tenancy Branch