



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants 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 landlord attended with their spouse and they were 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 tenants with the notice of application and evidence by registered mail sent to the forwarding address provided by the tenants on May 14, 2021. The landlord submitted a valid Canada Post tracking receipt and Proof of Service showing the materials received by the tenant SB on May 18, 2021 as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on May 19, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional invoices and receipts for cleaning and repairs to the rental unit have been received. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of a monetary claim for damages being amended as invoices and receipts are received is reasonably foreseeable I allow the landlord's application to amend their monetary claim from \$2,206.29 to \$5,905.85.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the security deposit for this tenancy?
Is the landlord entitled to recover the filing fee from the tenants?

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 landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began on November 1, 2020 and was scheduled to end on April 30, 2021 as the landlord intended to occupy the rental unit at that time. Monthly rent was \$2,400.00 payable on the first of each month. The tenancy agreement provides that the tenants are responsible for paying their own utilities. A security deposit of \$1,200.00 was paid at the start of the tenancy and is still held by the landlord. The addendum to the tenancy agreement provides that pets are not allowed in the rental unit. A copy of the signed tenancy agreement and addendum were submitted into evidence.

The tenants failed to pay full rent on April 1, 2021 as required under the tenancy agreement. The tenants paid partial rent on April 2, 2021 in the amount of \$800.00 and made no further payments towards the rent owed. The tenants failed to vacate the rental unit as required under the tenancy agreement on April 30, 2021 and overheld the unit until May 3, 2021. The landlord submitted into evidence copies of the correspondence with the tenants. The landlord claims the rental arrear of \$1,600.00 and \$232.26 compensation for the three additional days that the tenants overheld the rental unit.

The landlord further submits that the tenants failed to pay utilities as required under the tenancy agreement and there was a charge of \$122.03 for the water for the rental unit. The landlord submitted a copy of the utility bill into evidence.

The landlord testified that the tenants kept a pet dog and cat in the rental unit despite the tenancy agreement prohibiting pets. The tenants attended a move-out inspection at the end of the tenancy but disagreed with the assessment of damages and refused to sign the condition inspection report. The landlord submits that the rental unit required extensive cleaning, repairs and work due to the tenancy. The landlord submits that the flooring and carpets were damaged and stained to such a degree that it needed to be wholly replaced. The landlord says that the walls of the rental unit were marked up and defaced to a degree greater than would be expected from simple wear and tear. Various fixtures were broken, cabinet and closet doors were broken or loosened and the whole rental unit had the unpleasant odor of the pet animals' waste.

The landlord testified that due to the condition of the rental unit they needed to take significant steps to restore the suite to its pre-tenancy condition including replacing the carpets and tiling, painting walls, repairing or replacing fixtures, deep cleaning of the suite and garbage disposal. The landlord submits that the total cost of the cleaning is \$3,951.56. While the landlord did not submit documentary evidence in support of their claim by way of receipts and invoices, they provided clear and cogent testimony and an itemized list of the work done and services employed.

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 tenants failed to pay full rent as required under the tenancy agreement and failed to vacate the rental unit at the end of the tenancy. I find this portion of the landlord's claim to be supported in the documentary evidence including the correspondence with the tenants and copy of the

bank statement showing partial payment. I accept the submission of the landlord that the total arrear for this tenancy is \$1,832.26 and accordingly issue a monetary award in that amount.

I find that the tenancy agreement provides that the tenants are responsible for their own utilities. I accept that the tenants failed to pay utilities as required and there is an outstanding bill of \$122.03 for water usage in the rental unit. I therefore issue a monetary award in the landlord's favour in that amount.

I am satisfied with the undisputed testimony of the landlord that the tenants caused great damage to the rental unit that required significant cleaning, repairs and materials. While the landlord did not provide documentary evidence in support of this portion of their claim they provided cogent testimony including an itemized list of all of the deficiencies discovered in the suite, their attempts to clean and rectify the damage and the third-party companies they employed. The landlord gave precise amounts paid for the work done which I find to be reasonable and commensurate with the damage described. I therefore find that the landlord has met their evidentiary burden on a balance of probabilities to show that the tenants caused damage to the rental unit and the monetary amount of the damages. I accept that the total cost of the repairs and work is \$3,951.56 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application I allow them to recover their filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,805.85 on the following terms:

Item	Amount
Unpaid Rent April 2021	\$1,600.00
Overholding May 1 – 3, 2021	\$232.26
Unpaid Utilities	\$122.03
Damages and Repairs	\$3,951.56
Filing Fees	\$100.00
Less Security Deposit	-\$1,200.00
TOTAL	\$4,805.85

The tenants must be served with this Order as soon as possible. Should the tenants 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: October 28, 2021

Residential Tenancy Branch