



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Millennium Estates Holdings (2011)
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on June 28, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of unpaid rent;
- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord's agent (the Agent), who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and any other participants and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent(s) must be served with a copy of the Application, Notice of Hearing, and

the documentary evidence intended to be relied upon by the applicant(s) at the hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me on behalf of the Landlord and the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Application and the Notice of Hearing, were sent to the Tenants by registered mail on July 19, 2021. The Agent stated that although the Tenants never provided a forwarding address, the address used on the Tenants' application for tenancy was used, and that the registered mail was ultimately accepted by them at that address. The Agent provided me with the registered mail tracking number, which I have recorded on the cover page of this decision, along with a copy of the registered mail receipt and the completed registered mail tag. The Canada Post website confirms that the registered mail was sent as described above and delivered on July 26, 2021. The Agent stated that the above noted documents were also email on July 19, 2021, and that they received a message delivery receipt. A copy of this email was provided for my review and consideration. The Agent pointed me to clause 20 of the addendum to the tenancy agreement, which states that the parties agree to service by email and that email service will be deemed 2 business days from the time they were sent. As a result, I find that the Tenants were served with the above noted documents on July 26, 2021, by registered mail, if not earlier received by email as allowable under the *Act*, regulation, and tenancy agreement, in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Branch (Branch) records indicate that the Notice of Dispute Resolution Proceeding Package was emailed to the Landlord, at their request, on July 16, 2021, to be sent or served on the Tenants by July 19, 2021. As the registered mail and email(s) were sent on July 19, 2021, I therefore find that the Landlord or the Agent complied with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me lists both respondents as tenants and states that the fixed term tenancy commenced on June 1, 2020, and was set to end on May 31, 2021, after which time it could continue on a month to month basis. The tenancy agreement states that \$3,150.00 in rent was due on the first day of each month and that a \$1,575.00 security deposit was required. At the hearing the Agent confirmed that the \$1,575.00 security deposit was paid, none of which has been returned to the Tenants as no forwarding address has been provided.

The Agent stated that although the Application states that July and August 2021 rent is outstanding, July 2021 rent was actually paid, and it is August and September 2021 rent that is outstanding in the amount of \$3,150.00 per month, less a \$65.00 rent credit owed to the Tenants. The Agent stated that on August 20, 2021, the Tenant P.M. advised them that they were ending the tenancy. The Agent stated that the tenancy ultimately ended on August 27, 2021, when the rental unit was vacated by the Tenants and the move-out condition inspection was completed.

The Agent stated that the Landlord advertised the rental unit for re-rental as soon as they received notice that the tenancy was ending, but that it ultimately was not re-rented until mid-November 2021, at a decreased monthly rent amount of \$2,995.00. The Agent stated that the Landlord is seeking unpaid rent for August 2021 in the amount of \$3,085.00 (\$3,150.00, less a \$65 rent credit) and lost rent for September 2021 in the amount of \$3,150.00, because the Tenants gave only a few days notice to end the tenancy, contrary to the *Act*.

The Agent stated that the Tenants caused \$472.50 worth of damage to the rental unit and pointed to the move-in condition inspection report in support of their position that the rental unit was undamaged at the start of the tenancy, as well as an invoice for repair costs. The Agent also stated that the Tenant had agreed that the Landlord could retain \$472.50 from the security deposit, as shown on the move-out condition inspection

report. Although the Agent stated that the Tenant also verbally agreed that the Landlord could keep the entire security deposit due to outstanding rent, they stated that there was nothing in writing to that affect.

The Agent stated that the Tenants also owe \$224.70 in outstanding charges for electricity as the they were supposed to transfer the utilities into their own names after the start of the tenancy, but never did. As a result, the Agent stated that the electricity remained in the Landlords name and the Tenants currently owe \$244.70. The Agent pointed to an electricity bill in support of this claim amount.

Finally, the Agent sought recovery of the \$100.00 filing fee paid for the Application. Although the teleconference remained open until 2:10 P.M., no one called in on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

As there is no evidence to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement before me for consideration, as summarized above.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As there is no evidence before me that the Tenants had a right to deduct or withhold the \$3,150.00 in rent for August 2021, I therefore accept the Agent's affirmed testimony that they did not and award the Landlord recovery of this amount, less a \$65.00 rent credit owed to the Tenants. I also award the Landlord \$224.70 for the unpaid electricity bill, as I am satisfied that the Tenants used this electricity during their tenancy, that they were required to pay the Landlord for its use, and that they failed to do so.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. As a result, I find that the earliest the Tenants were entitled to end the tenancy under section 45(1) of the *Act* by giving notice on August 20, 2021, was September 30, 2021. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for

damage or loss that results and that the party who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the Agent's affirmed and uncontested testimony that they posted the rental unit for re-rental as soon as possible after receiving the Tenants' notice to end tenancy and that despite their best efforts, it could not be re-rented until mid-November 2021, at a reduced monthly rental rate. I am satisfied that the Tenants breached section 45(1) of the *Act* when they failed to give adequate notice to end their tenancy, and that the Landlord acted reasonably to mitigate their loss by advertising the rental unit as soon as possible and reducing the monthly rent. I am also satisfied that the Landlord suffered a loss of rental income for the month of September 2021 in the amount of \$3,150.00 due to the Tenants' breach of section 45(1) of the *Act*. As a result, I award the Landlord recovery of \$3,150.00 in lost rent for September 2021.

Based on the uncontested and affirmed documentary evidence before me for consideration, which includes condition inspection reports, invoices, and photographs, I am also satisfied that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear, as required by section 37(2)(a) of the *Act*. I am satisfied that the Landlord suffered a loss in the amount of \$472.50 as a result, and that they mitigated this loss by having the cleaning done and repairs completed at a reasonably economic rate. As a result, I award the Landlord recovery of these costs.

As the Landlord was successful in their Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. As there is no evidence before me that the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*, I find that they did not. I accept the Agents testimony that no forwarding address has been provided and as a result, I find that the requirements set out under section 38(1) of the *Act* have not yet been triggered. Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlord to retain the \$1,575.00 security deposit in partial repayment of the above owed amounts. Pursuant to section 67 of the *Act*, I also award the Landlord a Monetary Order for the balance owed, in the amount of \$5,457.20.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$5,457.20**. The Landlord is provided with this Order in the above terms and 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.

The Landlord is also authorized to retain the \$1,575.00 security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 7, 2022

Residential Tenancy Branch