



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNDL, MNDCL, FFL

TT: MNDCT, RPP, MNETC, FFT

Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied 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.

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67;
- A return of personal property pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

The tenant 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 landlords attended and 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 landlords testified that they served the tenant with their notice of application and evidence by email sent on October 23, 2021 to the email address confirmed by the tenant on a valid Residential Tenancy Branch Address for Service form. The landlords submitted into evidence an Address for Service form signed by the tenant providing

their email address for service and a screenshot of email sent to that address on October 23, 2021. Based on the evidence I find the landlord's application and materials deemed served on the tenant on October 26, 2021, three days after emailing in accordance with sections 88, 89 and 90 of the Act and 43 and 44 of the Regulations.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the 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.

This tenancy began on June 1, 2020. The monthly rent was \$1,700.00 payable on the first of each month. There was a previous hearing under the file numbers on the first page of this decision. The security and pet damage deposits for the tenancy were conclusively dealt with in the previous decision.

The tenant abandoned the rental unit sometime in July 2021 leaving behind a large volume of items, furniture and property. The rental unit was left in a state of disarray requiring considerable cleaning, maintenance and work by the landlords to restore to its pre-tenancy condition. The landlords submitted into evidence a number of photographs of the unit as well as a condition inspection report prepared in the absence of the tenant outlining the damage to the suite. Among the issues were damage to appliances and fixtures, pet urine and feces littering the unit, damaged walls, doors and cabinetry, and fixtures such as smoke alarms removed from the unit.

The landlords submit that they incurred considerable costs for cleaning, repairs and maintenance and provided receipts and invoices for the work performed. The landlords testified that they took reasonable steps to mitigate their losses by performing much of the labour themselves and purchasing replacement items that were of equal value to those damaged or removed by the tenant.

The landlords submit that pursuant to the tenancy agreement the tenant was responsible for paying for their own utilities. The tenant failed to pay their monthly bills

to the utility companies and the landlords were required to pay the charges for the suite. The landlords submitted the utility bills for the rental unit into evidence.

The landlords submit that they incurred costs for storage of the items left abandoned by the tenant in the rental unit. The landlord submitted invoices for removing and storing these items.

The landlords submit that the total amount of their monetary losses for cleaning, maintenance and work on the rental unit, unpaid utilities and costs of removing and storing items is \$4,161.84.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

As the tenant did not attend this hearing to pursue their application, I dismiss the tenant's claim in its entirety without leave to reapply.

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 am satisfied with the undisputed evidence of the landlords that the rental unit was left in a state of disrepair by the tenant and they incurred considerable costs to restore the suite to its pre-tenancy condition. I find the detailed testimony of the landlords, their numerous photographs, condition inspection report completed at the time the rental unit was abandoned by the tenant and their other documentary materials to be sufficient to establish their claim on a balance of probabilities.

I find that the description of the work performed, supported in the documentary evidence of invoices and receipts, to be reasonable and commensurate with the damage shown. I accept that the landlords took reasonable steps to mitigate their losses.

I find that the utility invoices and invoices for removing and storing the items left in the rental unit by the tenant to be sufficient to establish the balance of the monetary claim. I find that the tenant left considerable items which were stored by the landlords in accordance with section 25 of the Regulations.

Based on the evidence I am satisfied that the landlords have established that the tenants caused damage to the rental unit, failed to pay utilities as required, and left property in the rental unit. I am satisfied with the submission of the landlords that the total amount of their monetary losses as a result of the tenant's breaches is \$4,161.84. Accordingly, I issue a monetary award in the landlords' favour in that amount.

As the landlords were successful in their application they are also entitled to recover the filing fee from the tenant.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$4,261.84. 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.

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: January 6, 2022

Residential Tenancy Branch