



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenants confirmed receipt of the landlord's materials and testified that they have not served the landlord with the materials they have uploaded to the Branch. The landlord confirmed they were not served with any materials. Based on the testimonies I find the tenants duly served in accordance with sections 88 and 89 of the *Act*. As the landlord was not served with the tenants' materials in accordance with the *Act* and Rules of Procedure or at all I decline to consider the tenants' evidence and exclude it from consideration at this hearing.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim. The landlord said that since the application was filed the tenants have

made partial payment of the arrear and that the landlord has managed to mitigate some of their losses. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as the total amount of the arrear changing with partial payment is reasonably foreseeable I amend the landlord's application to decrease the amount of their claim to \$1,490.59.

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

This periodic tenancy began on October 1, 2020. The monthly rent was \$1,250.00 payable on the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay rent as required on June 1, 2021 and there was an arrear of \$1,250.00 for that month. The tenants subsequently failed to pay rent as required on July 1, 2021. The tenants vacated the rental unit on July 7, 2021. The tenants subsequently made a payment of \$518.13 on July 15, 2021.

The landlord submits that pursuant to an agreement with the tenants, the tenants are entitled to reimbursement for a portion of the utilities paid for the tenancy. The landlord calculates the amount to be reimbursed to be \$491.28. The landlord submitted into evidence copies of the bills from the utility companies and their calculations as evidence of the amount payable to the tenants.

The landlord calculates that the total arrear for this tenancy is: \$2,500.00 the unpaid rent for June and July 2021, less the payment of \$518.13 and the utility reimbursement of \$491.28 for a total arrear of \$1,490.59.

The tenants dispute that any amount is payable to the landlord and gave some testimony regarding their belief that they are entitled to withhold rent and complaining about the landlord's character.

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 find that there was an enforceable tenancy agreement between the parties wherein the tenants were obligated to pay monthly rent in the amount of \$1,250.00 on the first of each month. I accept the evidence that the tenants failed to pay rent as required on June 1, 2021 and July 1, 2021 giving rise to a rental arrear of \$2,500.00.

I do not find the tenant's submission that they are not entitled to pay the rent or that they are able to unilaterally end the tenancy without notice as required under the *Act* to be persuasive or supported in any of the evidence.

I accept the evidence of the landlord that the tenants made partial payment on July 15, 2021 and are also entitled to reimbursement of a portion of the utilities in the total amount of \$1,009.41. I accept the landlord's submission that the total arrear for this tenancy, as at February 15, 2022, the date of the hearing is \$1,490.59. I therefore issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application, they are entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$965.59. 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: February 15, 2022

Residential Tenancy Branch