



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 was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent of \$260.00;
- a monetary order for damage or compensation for damage of \$1,240.00;
- a monetary order of \$1,000.00 for damages for the Landlord, retaining the security deposit to apply to these claims; and
- recovery of the \$100.00 cost of her Application filing fee.

The Tenants J.M. and B.U., and the Landlord, M.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Landlord, D.C., was also present and ready to provide affirmed testimony.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that

the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2020, and was to run to May 1, 2022, with a monthly rent of \$1,000.00, plus utilities. They agreed that the Tenants are required to pay this rent to the Landlord on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$500.00, and no pet damage deposit. They agreed that the Tenants vacated the rental unit on July 7, 2021, following service of a 10 Day Notice for End of Tenancy for Unpaid Rent.

#1 MONETARY ORDER FOR UNPAID RENT → \$260.00

In the hearing, the Landlord said

We had a problem with the smell from downstairs from the grow op. We never knew about it until the flood. The hot water tank broke. We put it in first with their permission. I let the cats in and found at least a foot of water in the basement. I removed her bed on the floor to get it out of there, but the cushions, the cats are in there and their feet are wet. I tried to remove as much as I could.

When we turned the water back on. We couldn't figure out where the water was coming from. We cut holes in the ceiling and the walls. [B.U.] came in one afternoon and helped.

The money is the money she didn't pay in rent from the first to the seventh. This is rent and partial hydro. It's only \$150.00 a month but it was calculated by how many days of the month with \$150.00 utilities.

I note that the Landlord's calculation for unpaid rent in July 2021, includes the rent at \$1,000.00 per month, which equals \$32.26 per day, plus \$150.00 per month utilities, which equals \$4.84 per day. The total of \$37.10 per day, which equals **\$259.70** for seven days in July 2021.

The Tenants responded to the Landlord's testimony, as follows:

At this point, when we got our eviction notice, it was – when I talked to the rental board - they said if we're getting served a 10 Day Notice, we didn't need to pay any more rent.

Re the plumber. There was not any of that it was all [D.C.] doing the work.

#2 MONETARY ORDER FOR COMPENSATION UNDER THE ACT → \$1,240.00

The Landlord said:

They were evicted because they had a grow up downstairs. All of the expenses is trying to get the smell out of my house. Every cent I have put out is trying to clean up the smell. From the 1st to the 7th, every light was left on, every fan was left on, because I could hear the fan from upstairs. And I could see it.

I'm just going by my receipt . . . these are for buying commercial fans, charcoal filters to try to decontaminate the place. Every time we went in there, the smell of the marijuana was so overwhelming.

The Tenants responded, as follows;

She said she didn't know anything about the grow op we had. But early in the new year, I built a little pen, because she had vegetables and strawberries. She didn't say anything, but she knew about it. It was a little grow op – ventilated insulated sheets in the side of a clothes rack, and she had strawberries and kiwi, cantaloupe there, and she saw that in the tent.

When we moved in, she did up our electrical in February or March, and she asked for more Hydro money. But we didn't start growing anything, and she signed off on the form saying I can grow indoors – she knew about it. We never smoked or lit any cannabis inside the house.

In her written submissions, the Landlord claimed the following costs that she said she

incurred cleaning up at the end of this tenancy:

We have had fans ventilating the house since July 7, 2021 and there is still toxic air in the house that gives me a headache.

This is a list of expenses to date, trying to get the suite back to how it was when you moved in.

July 7 to July 12 I placed 6 fans and moved them twice a day to maximize wind from lake \$10 per day per fan electricity and labour 6 fans \$60 per day times 6 days \$360;

July 13 bought 24" industrial fan

July 14 bought charcoal filter for 6 inch inline fan \$182 plus charcoal filters for heat pump \$74

We have had to buy an air conditioner and mount it in the door because we still cannot use the heat pump air conditioner

June ? setup air conditioner in front door 2 hrs times \$25 = \$50

July 7 1 hr times two people, Moving furniture and placing fans \$25 per hr =\$ 50

July 8 Remove rug from room 2 hrs times two people = 4 hrs times \$25 =\$100

July 13 setup industrial fan in room where marijuana was growing 2 hrs =\$ 50

July 16 3 hrs spraying walls and washing times \$25 = \$ 75

July 7 to July 12 - 6 fans =\$360

July 13 to July 18 industrial fan and 6 inch inline fan with charcoal filter

plus two fans upstairs \$50 per day for 6 days =\$300

Charcoal filters for inline fan \$182 and heat pump air conditioner \$74 =\$256

Seven days rent & utilities =\$260

Total to July 18, 2021 \$1,501.00

There is still a toxic smell in the room you were growing marijuana in; it needs more scrubbing and ventilation. Three tiles with acid stain and multiple pin holes in the suite. One shelf missing. Paint stains in the laundry tub and general cleaning

However, the Landlord did not direct me to any receipts that she had uploaded to support her monetary claims in this matter. Further, the Landlord has claimed \$2,240.00

for this and the next claim; however, her total claimed amount noted above is only \$1,501.00.

#3 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$1,000.00

The Landlord said:

This is for having to pay extra to have the Hydro on for the extra fan that we had to buy, and we had to order charcoal filters. I'm not exactly sure for every single one. I'm frustrated by what was said. I did not know they had a cannabis grow op. She had little plants, house plants, no baby plants growing there. I am not familiar with pot; I have no idea about it, other than that smell was coming upstairs in my house. We asked them to remove it. We had to physically go in and move it ourselves. Those expenses are all from the grow op to try to get rid of the house. And there were holes in walls.... She sent a picture showing a wood counter top.

I'd like to just say that [D.C.] - he has always done plumbing work for anybody and everybody. He is qualified, has tickets, certificates..., and I trust him with the work that he has done.

The Tenants responded:

On March 4 we had a conversation about more expensive Hydro. We were asked for another \$100.00 for January and February, and I sent that information.

Near the end of our tenancy, the date that [the Landlord and the Witness] were in the suite and had found the plants, we were asked to move them out, maybe 6:30 p.m., but they came in at about 4:00 or 5:00 a.m. while [we] were still sleeping.

A little bit later, after we got our 10 Day Notice, they heard water running downstairs, and I wasn't dressed, and [D.C.] came in without notice. It was very traumatic for me.

I can remember that day like – they came in at 4:30 in the morning - they came barging in. They told us the night before that we had 24 hours to get it out. We're not going to move . . . I had the next day off and we were going to move them then, because I'm up at 5:00 in the morning.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to Rule 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person who applied for dispute resolution. In the case before me, the Landlord has the burden of proving her claims on a balance of probabilities.

#1 MONETARY ORDER FOR UNPAID RENT → \$260.00

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Receipt of a 10 Day Notice does not exempt a tenant from their obligation under the Act to pay rent.

Ordinarily, if a tenant occupies the rental unit for any part of the month, the landlord may claim the entire month’s rent, because it would be difficult to rent a suite for part of a month. However, in this case, the Landlord claim rent and utilities for a pro-rated number of days, which I find is reasonable in the circumstances. I, therefore, award the Landlord with recovery of **\$259.70** from the Tenants, pursuant to sections 26 and 67 of the Act.

#2 MONETARY ORDER FOR COMPENSATION UNDER THE ACT → \$1,240.00

As set out in Policy Guideline #16 (“PG #16”), “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.” [emphasis added]

However, the Landlord did not direct me to any receipts she submitted for any of the monetary claims in her Application. As a result, I find that the Landlord had not provided sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#3 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$1,000.00

Again, the Landlord has the burden of proof in this matter, however, she did not direct me to any evidence she submitted with receipts or invoices for the amounts claimed. As a result, I dismiss this claim without leave to reapply.

Summary and Set Off

The Landlord has been awarded **\$259.70** for unpaid rent from the Tenants. However, as the Landlord was unsuccessful in her claims, I decline to award the Landlord with recovery of the \$100.00 Application filing fee from the Tenants.

The Landlord is authorized to retain \$259.70 from the Tenants' \$500.00 security deposit, pursuant to section 72 of the Act. I Order the Landlord to return the remaining \$240.30 to the Tenants, as soon as possible. The Tenants are granted a Monetary Order for **\$240.30** for the return of their remaining security deposit from the Landlord.

Conclusion

The Landlord is mainly unsuccessful in her Application, as she failed to provide sufficient evidence to prove her claims on a balance of probabilities. However, the Landlord was awarded compensation from the Tenants for unpaid rent of **\$259.70**.

The Landlord has established a monetary claim of **\$259.70**. I authorize the Landlord to retain \$259.70 of the Tenants' **\$500.00** security deposit in complete satisfaction of the claim. The Landlord is Ordered to repay the remaining amount of the Tenants' security deposit, as soon as possible. The Tenants are granted a Monetary Order under section 67 for the balance due by the Landlord to the Tenants of **\$240.30**. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) 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 28, 2022

Residential Tenancy Branch