



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*") made on July 18, 2021. The Landlords applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlords attended the hearing and were each affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on July 30, 2021, two Canada Post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants have been duly served in accordance with the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The hearing process was explained. The Landlords were provided with an opportunity to ask questions about the hearing process and were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages and losses under the *Act*?
- Are the Landlords entitled to a monetary order for rent?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on April 1, 2019. Rent in the amount of \$1,300.00 was payable on the first day of each month, and the Tenants had paid a security deposit of \$650.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord's testified that this tenancy ended on February 28, 2021, in accordance with the *Act*, and that the move-out inspection was completed on March 2, 2021, without the Tenants. The Landlords testified that they provided two opportunities to the Tenants to attend the inspection, the last one in writing on the approved form but that the Tenants refused to attend. The Landlord's submitted a copy of the move-in/move-out inspection report (the "inspection report"), 60 pictures, an email, and copy of the Notice of Final Opportunity to Schedule a Condition Inspection (RTB-22) into documentary evidence.

The Landlords testified that when the tenancy ended, there was \$1,238.96 in unpaid rent outstanding. The Landlords testified that they had issued a Repayment Plan (RTB-14) to the Tenants on August 25, 2020, listing \$2,479.68 in Covid-19 affected rent that was past due for the period between April 1, 2020, to August 1, 2021. The Repayment Plan listing a 10-month repayment plan of \$247.97 per month, starting October 1, 2020, and ending July 1, 2021. The Landlords testified that the Tenants made five of the ten

payments required under that plan when the tenancy ended. The Landlords are requesting the recovery of their unpaid rent in the amount of \$1,238.96.

The Landlords testified that when the tenancy ended, there was \$557.27 in unpaid utilities, consisting of \$368.24 in BC Hydro bills, \$93.37 in Fortis Gas, and \$91.03 in CRD water bills. The Landlords submitted a copy of a demand letter and eight utility invoices into documentary evidence.

The Landlords testified that they are claiming for the replacement cost of two shelving units, in the amount of \$113.05, as one was damaged and the other was missing at the end of the tenancy. The Landlord noted that the shelving units had been included in the tenancy agreement. The Landlords submitted a copy of two invoices into documentary evidence.

The Landlords testified that they are claiming for the replacement cost of a missing TV wall mount, in the amount of \$62.69. The Landlords noted that the TV wall mount had been included in the tenancy agreement. The Landlords submitted a copy of the invoice into documentary evidence.

The Landlords testified that they are claiming for the recovery of their cost for paint and a new deadbolt, in the amount of \$311.95. The Landlord testified that the walls were in bad shape at the end of this tenancy, with holes, scratches, scuffs, and dirt, as noted on the move-out inspection. Additionally, the Landlords testified that the Tenants did not return the keys to the rental unit at the end of the tenancy and that due to this, they had to change the locks to the rental unit. The Landlords submitted one invoice for the paint and the deadbolt into documentary evidence.

The Landlords testified that they are claiming for the recovery of their cost for replacing a damaged shower curtain rod, a damaged smoke detector, and cleaning supplies, in the amount of \$134.40. The Landlords testified that the rental unit was returned to them uncleaned at the end of the tenancy, as noted on the move-out inspection. Additionally, the Landlords testified that the Tenants had returned the rental unit to them with a bent shower curtain rod and a damaged smoke detector at the end of the tenancy and that both of those items had to be replaced. The Landlords submitted one invoice for a shower rod, a smoke detector, and cleaning supplies into documentary evidence.

The Landlords testified that they are also claiming carpet cleaning in the amount of \$150.55, as the Tenants returned the rental unit to them with uncleaned carpets, as

noted on the inspection report. The Landlords submitted two invoices into documentary evidence.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the undisputed testimony of the Landlords supported by their documentary evidence that the rent has not been paid as per the repayment plan and that this tenancy ended with 1,238.96 in outstanding rent. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement and the *Act*.

Therefore, I find that the Landlords have established an entitlement to a monetary award in the amount of \$1,238.96, comprised of five outstanding repayments of \$247.97 due under the Covid-19 affected rent repayment plan. I award the Landlord their requested amount in unpaid rent for this tenancy, in the amount of \$1,238.96, and I

grant the Landlords permission to retain the security deposit for this tenancy in partial satisfaction of this award.

Additionally, I accept the undisputed testimony of the Landlords supported by their documentary evidence that they have issued a written demand for the outstanding utilities, to the Tenants, in the amount of \$557.27 and that as of the date of these proceedings, the Tenants have not paid these utilities. Therefore, I find that the Landlords have established an entitlement to a monetary award for the payment of these utilities. I award the Landlord their requested amount in unpaid utilities of \$557.27, comprised of \$368.24 in BC Hydro bills, \$93.37 in Fortis Gas, and \$91.03 in CRD water bills.

The Landlords are also claiming \$772.64, consisting of \$113.05 to replace shelves, \$62.69 to replace a TV wall mount, \$311.95 for paint and a deadbolt, \$134.40 for a shower curtain rod, a smoke detector, and cleaning supplies, and \$150.55 to clean carpets at the end of this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. The party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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 who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the inspection report and picture evidence submitted into evidence by the Landlords, and I find that this evidence shows that the rental unit was returned to

the Landlords in an uncleaned and damaged state, with one missing shelving unit, one damaged shelving unit and TV wall mount. Section 37(2) of the *Act* states the following regarding the conditional of the rental unit at the end of a tenancy:

Leaving the rental unit at the end of a tenancy

37 (2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenants breached section 37(2) of the *Act* when they returned this rental unit to the Landlords in an uncleaned and damaged state with missing items. I also find that the Landlords have provided sufficient documentary evidence to show that they suffered a loss of \$772.64 due to the Tenants breach of the *Act*. Therefore, I award the Landlord the return of their claimed costs for damages in the amount of **\$772.64**, consisting of \$113.05 to replace shelves, \$62.69 to replace a TV wall mount, \$311.95 for paint and a deadbolt, \$134.40 for a shower curtain rod, a smoke detector, and cleaning supplies, and \$150.55 to clean carpets.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$2,018.65, consisting of \$1,238.96 in outstanding rent, \$557.27 in outstanding utilities, \$772.64 in damages, and \$100.00 in the recovery of the filing fee for this hearing, less the \$650.00 security deposit the Landlords are holding for this tenancy.

Conclusion

I find for the Landlords under sections 67 and 72 of the *Act*. I grant the Landlords a **Monetary Order** in the amount of **\$2,018.65**. The Landlords are 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.

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 3, 2022

Residential Tenancy Branch