



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on August 28, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Landlords testified that hearing packages and their evidence were sent to each of the Tenants’ forwarding address. The Landlords testified that Tenant B.G. sent their forwarding address by text message and Tenant K.L. provided their forwarding address verbally over the phone. The Landlords testified that the packages were sent by registered mail on September 16, 2021. The Landlords submitted registered mail receipts with Tracking Number 870 (for Tenant B.G.) and 154 (for Tenant K.L.) on them and the Landlords confirmed these relate to the hearing packages and their evidence. I looked Tracking Number 870 up on the Canada Post website which shows the package was unclaimed and returned to the sender. I looked Tracking Number 154 up and the website shows the item was returned to the sender due to an incomplete address.

The Landlords testified that they also sent the hearing package and their evidence to Tenant K.L. by email. A copy of the email is not in evidence. Nor is there documentary evidence before me showing Tenant K.L. provided an email address for service or that the parties communicated by email regularly during the tenancy.

Based on the undisputed testimony of the Landlords, registered mail receipt and Canada Post website information, I find Tenant B.G. was served with the hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Act* on September 16, 2021. Tenant B.G. cannot avoid service by failing to pick up registered mail and is deemed to have received the package September 21, 2021 pursuant to section 90(a) of the *Act*. I also find the Landlords complied with rule 3.1 of the Rules in relation to the timing of service.

In relation to Tenant K.L., it is clear from the Canada Post website that the package was not delivered to Tenant K.L. and was returned to the Landlords due to an incomplete address. In the circumstances, I decline to apply the deeming provisions in section 90 of the *Act* because Canada Post never delivered or attempted to deliver the package to Tenant K.L. before sending it back to the Landlords. The Landlords should have corrected the address and re-sent the package. The Landlords testified that they also emailed the hearing package and their evidence to Tenant K.L.; however, a copy of this email is not before me, there is no evidence that Tenant K.L. provided their email address for service and there is no evidence that the Landlords and Tenant K.L. communicated by email regularly during the tenancy. In the circumstances, I am not satisfied Tenant K.L. was served with the hearing package and Landlord's evidence in accordance with the *Act* and therefore I have removed Tenant K.L. from any orders issued.

Given I was satisfied of service of Tenant B.G., I proceeded with the hearing. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Outstanding utilities	\$1,661.91
2	Cleaning	\$400.00
3	Filing fee	\$100.00
	TOTAL	\$2,161.91

A written tenancy agreement was submitted as evidence. The tenancy started September 01, 2020, and was for a fixed term ending August 31, 2021. Rent was \$2,600.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit.

The Landlords testified as follows.

The tenancy ended August 13, 2021.

Tenant B.G. provided their forwarding address to the Landlords by text on August 15, 2021.

The Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy.

Tenant K.L. agreed to the Landlords keeping the security deposit for outstanding utilities "and other dues", a copy of which is in evidence.

The parties did a move-in inspection but no Condition Inspection Report ("CIR") was completed.

The Landlords and Tenant K.L. did a move-out inspection but no CIR was completed.

The Tenants failed to pay their portion of the gas, hydro and water bills during the tenancy and \$1,661.91 is owing. The Tenants were given a copy of the utility bills. The addendum to the tenancy agreement states that the Tenants owe 80% of the utilities; however, it was agreed that they would pay 70% instead.

The Tenants left the rental unit dirty at the end of the tenancy. The Tenants did not clean the rental unit at all. The Landlords hired someone to clean the unit and paid them in cash. It took a full day to clean the unit.

The Landlords submitted the following relevant documentary evidence:

- Utility bills
- A letter dated August 13, 2020 from Tenant K.L. about the state of the rental unit at the end of the tenancy
- A ledger for outstanding utilities
- A letter dated August 13, 2021 from Tenant K.L. agreeing to the Landlords keeping the security deposit for outstanding utilities and other dues
- The tenancy agreement and addendum

Analysis

Security deposit

Section 38 of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I find based on the letter in evidence dated August 13, 2021 from Tenant K.L. that Tenant K.L. did agree in writing at the end of the tenancy that the Landlords could keep the security deposit towards outstanding utilities and other dues. Therefore, the Landlords can keep the security deposit pursuant to section 38(4) of the *Act*. Section

38(5) of the *Act* does not apply because the agreement relates to outstanding utilities and the amount owing exceeds the amount of the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Outstanding utilities

I accept based on the addendum and undisputed testimony of the Landlords that the Tenants were required to pay 70% of all utilities, including water, sewage, gas and electricity, pursuant to the tenancy agreement. I accept based on the ledger, utility bills and undisputed testimony of the Landlords that the Tenants failed to pay \$1,661.91 in utilities during the tenancy. The Landlords are entitled to \$1,661.91 for outstanding utilities.

Cleaning

Section 37 of the *Act* states:

(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...

I accept based on the letter dated August 13, 2020 from Tenant K.L. about the state of the rental unit at the end of the tenancy and the undisputed testimony of the Landlords that the Tenants did not clean the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlords had to hire cleaners to clean the rental unit. I accept the undisputed testimony of the Landlords that they paid \$400.00 for the cleaners. I find the amount sought reasonable and note that Tenant B.G. did not appear at the hearing to dispute the amount. The Landlords are entitled to \$400.00.

Filing fee

Given the Landlords have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Outstanding utilities	\$1,661.91
2	Cleaning	\$400.00
3	Filing fee	\$100.00
	TOTAL	\$2,161.91

The Landlords can keep the \$1,300.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$861.91 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$2,161.91. The Landlords can keep the \$1,300.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$861.91. This Order must be served on Tenant B.G. and, if Tenant B.G. does not comply with the Order, it 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 *Act*.

Dated: March 17, 2022

Residential Tenancy Branch