



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant DK" tenant did not attend this hearing, which lasted approximately 48 minutes. The landlord's agent and tenant LJ ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent confirmed his name and spelling. He stated that he is the property manager, employed by the landlord company ("landlord") named in this application. He said that he had permission to represent the landlord at this hearing. He confirmed the rental unit address. He provided his email address for me to send this decision to the landlord after the hearing.

The tenant confirmed her name and spelling. She provided her email address for me to send this decision to her after the hearing. She stated that she does not have permission to represent tenant DK as an agent, at this hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by anyone. At the outset of this hearing, the landlord's agent and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing and they did not want to settle this application.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Preliminary Issue – Service of Landlord's Application to Tenant DK

The landlord stated that tenant DK was served with the landlord's application for dispute resolution, notice of hearing, evidence package, landlord-tenant fact sheet, and respondent instructions on September 26, 2021, by way of registered mail and email. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. The landlord provided a copy of a sent email, dated September 26, 2021.

The landlord's agent stated that the registered mail was sent to an address provided by the tenant, by text message on July 27, 2021, to deliver furniture to tenant DK after this tenancy ended. He said that the landlord did not provide a copy of the Canada Post tracking report, nor did the landlord receive any mail returned to sender. The tenant confirmed that she provided tenant DK's mailing address to the landlord by text message, on behalf of tenant DK, as she was authorized to do so at that time. The landlord's agent stated that he sent tenant DK's furniture to that address and the tenant confirmed that tenant DK received the furniture at that address.

The landlord's agent said that the email was sent to an email address provided by tenant DK on page 1 of the tenancy agreement, which was signed and initialled by tenant DK. He claimed that tenant DK agreed with receiving email service for notices regarding the tenancy at his email address, as per paragraph 19 on page 3 of the parties' signed tenancy agreement addendum. He maintained that although the attached documents were not visible in the sent email provided by the landlord as

evidence for this hearing, all of the above documents were sent to tenant DK in that same email of September 26, 2021.

In accordance with sections 89 and 90 of the *Act*, I find that tenant DK was deemed served with the landlord's application and all of the above required documents on October 1, 2021, five days after its registered mailing.

In accordance with section 89 of the *Act* and sections 43 and 44 of the *Regulation*, I find that tenant DK is deemed served with the landlord's application and all of the above required documents on September 29, 2021, three days after the email was sent.

I accept the affirmed and undisputed testimony of the landlord's agent that the landlord sent the landlord's application and all of the above required documents to tenant DK by email on September 26, 2021. The landlord provided the sent email showing tenant DK's email address, this email address was contained on the parties' signed and initialled written tenancy agreement, and permission to serve by email was provided by tenant DK to the landlord, as per the signed tenancy agreement addendum.

I accept the affirmed and undisputed testimony of the landlord's agent and the tenant that the landlord sent the landlord's application and all of the above required documents to tenant DK by registered mail on September 26, 2021. I find that the landlord served tenant DK at his residential address, permitted by section 89 of the *Act*. I find that the tenant was authorized to provide a residential address on behalf of tenant DK in July 2021, when the text message was sent. I find that tenant DK received furniture at the above address. The landlord provided the Canada Post receipt and tracking number. Although I notified the landlord's agent during this hearing, that the above mail was returned to sender, it was unclaimed, as per the Canada Post website for the tracking number provided by the landlord. Unclaimed or refused mail does not avoid the deeming provisions of section 90 of the *Act*.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent and the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent and the tenant agreed to the following facts. This tenancy began on August 1, 2020 and ended on July 26, 2021. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$875.00 was paid by the tenants and the landlord continues to retain this deposit in full. A move-in condition inspection report was completed but a move-out condition inspection report was not completed by both parties for this tenancy. The tenants did not provide written forwarding addresses to the landlord. A written tenancy agreement and addendum were signed by both parties and a copy was provided for this hearing. The landlord did have written permission to keep any amount from the tenants' security deposit. The landlord filed this application to keep the tenants' security deposit on September 15, 2021.

The landlord seeks a monetary order of \$9,820.00 plus the \$100.00 application filing fee. The landlord seeks to retain the tenants' entire security deposit of \$875.00 in partial satisfaction of the monetary order.

The landlord's agent testified regarding the following facts. The tenants owe \$6,905.00 for back rent to the landlord. The landlord applied the tenants' security deposit of \$875.00 to the unpaid rent, so the balance owing from the tenants is \$6,030.00. The landlord provided a rent ledger for the unpaid rent. The landlord had to remove the tenants' contents from the rental unit and arrange to deliver the furniture to the tenants' address provided in a text message by the tenant. The tenants did not have any movers to remove their stuff from the rental unit. The landlord paid \$840.00 for the furniture delivery. The landlord had to paint the rental unit and the walls were in terrible condition, so the landlord spent \$1575.00 for this cost. The landlord had to clean the rental unit for \$500.00. The landlord did not make a claim to replace the refrigerator at the rental unit, in this application.

The tenant testified regarding the following facts. She agrees with everything in the landlord's application, and she agrees to pay all of the above amounts claimed by the landlord. The tenant does not agree to pay the above amounts on her own as tenant DK should help her pay. She did all the cleaning when the tenants moved out. The

tenants could not afford movers to move their furniture from the rental unit. Tenant DK did not help with anything. She never wanted to be so behind in rent. The tenants left the rental unit in a complete mess when they left. The tenant was told by tenant DK that he would pay the rent owing to the landlord, but he never did anything, and he left everything to the tenant. The tenant was left taking care of the tenants' two kids and tenant DK lied to her about everything.

Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord's agent and the tenant.

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord is entitled to \$6,905.00 total in unpaid rent from the tenants. The landlord provided undisputed, affirmed testimony and evidence that the tenants failed to pay rent of \$6,905.00 to the landlord. The landlord provided a rent ledger for same. The tenant agreed that she owes the above rent amount and agreed to pay it to the landlord, during this hearing. Tenant DK did not appear at this hearing to dispute the landlord's claim for unpaid rent.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$840.00 to deliver the tenants' furniture to their residence, \$1,575.00 to paint and repair the rental unit, and \$500.00 to clean the rental unit. The landlord provided undisputed, affirmed testimony and evidence regarding the above

costs. The landlord provided three invoices for the above costs. The landlord provided a move-in condition inspection report and photographs as well as move-out photographs of the condition of the rental unit. The tenant agreed that she owes the above amounts and agreed to pay them to the landlord, during this hearing. Tenant DK did not appear at this hearing to dispute the above claims made by the landlord.

The landlord continues to hold the tenants' entire security deposit of \$875.00. The landlord applied to retain the deposit in this application. No interest is payable on this deposit over the period of this tenancy.

This tenancy ended on July 26, 2021. The landlord did not have written permission to keep any part of the tenants' security deposit. The landlord filed this application to retain the tenants' security deposit on September 15, 2021. The tenants did not provide a written forwarding address to the landlords. Therefore, the tenants are not entitled to double the amount of their security deposit from the landlord. Although the landlords' right to retain the tenants' security deposit for damages was extinguished for failure to complete a move-out condition inspection report, as required by section 36 of the Act, the landlord also applied for claims other than damages, including rent.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' entire security deposit of \$875.00, in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenants.

The landlord is entitled to \$9,920.00 total against the tenants. This includes \$6,905.00 for rent, \$840.00 to deliver the tenants' furniture to their residence, \$1,575.00 to paint and repair the rental unit, \$500.00 to clean the rental unit, and \$100.00 for the application filing fee. The tenants' security deposit of \$875.00 has been deducted from the above total amount, leaving a balance of \$9,045.00.

I issue a monetary order in the landlord's favour in the amount of \$9,045.00 against the tenants.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$875.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$9,045.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: May 09, 2022

Residential Tenancy Branch