



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, MNRL-S, MNDCL-S, FFL**

Introduction

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

- a monetary order for damages and loss 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 tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenants on March 9, 2022. The landlord submitted valid Canada Post tracking receipts and information as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on March 14, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the relief sought?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. Monthly rent for this periodic tenancy was \$1,649.37 payable on the first of each month. A security deposit of \$789.00 was collected at the start of the tenancy and is still held by the landlord. The tenancy ended on February 28, 2022 and there was an arrear of \$2,621.90 at the end of the tenancy arising from unpaid rent and NSF charges.

The landlord provided a detailed tenant ledger showing the amounts payable and owing for this tenancy.

The parties participated in a move-out inspection and the landlord found various issues in the suite requiring cleaning, repairs or work. The parties signed the inspection report confirming the state of the rental unit at the end of the tenancy. The tenants gave written authorization that the landlord may retain the full amount of the security deposit for this tenancy towards the rental arrear.

The landlord submits that the total cost of repairs, cleaning and work is \$1,742.64. The landlord submitted numerous receipts, invoices and bills showing the work performed and the cost.

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 am satisfied with the undisputed evidence of the landlord that the total arrear for this tenancy is \$2,621.90. I am satisfied with the detailed ledger, the tenancy agreement signed by the parties and the undisputed testimony that the tenants were obligated to pay rent in the amount of \$1,649.73 on the first of each month and a NSF fee would be charged for dishonored cheques. I am satisfied that the total arrear is \$2,621.90 as claimed and issue a monetary award in that amount accordingly.

I am satisfied with the evidence that the rental unit required some cleaning and work that is attributable to the tenancy. I am satisfied, based on the documentary evidence and the cogent testimony of the landlord, that the landlord mitigated their losses in a reasonable manner and the costs incurred are for restoring the rental unit to its pre-tenancy condition rather than an improvement or upgrade. I accept the evidence of the landlord that the total amount of their losses is \$1,742.64 and issue a monetary award in that amount.

As the landlord was successful in their application, they are also entitled to recover their 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 \$3,675.54, representing the rental arrear, damages and loss and recovery of filing fees and allowing for the retention of the security deposit. 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: July 26, 2022

Residential Tenancy Branch