



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MILLBRIDGE HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; unpaid rent or utilities; to keep all of the Tenants’ security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; for ‘Other’ issues of which none were identified during the hearing; and to recover the filing fee.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenants for the 43 minute duration of the hearing and no submission of written evidence prior to the hearing.

As the Tenants failed to appear for the hearing I turned my mind to the service of the Application and Notice of Hearing documents (the “hearing package”) to the Tenants.

The Landlord testified that both Tenants were served with the hearing package by registered mail on March 20, 2014 to their rental unit address and provided both copies of the Canada Post tracking numbers as documentary evidence.

The Landlord testified that the bailiffs had enforced an Order of Possession which the Landlord had been issued as a result of a previous non participatory hearing held on March 3, 2014 (the file number for this case appears on the front page of this decision). The eviction was enforced by the court bailiffs on March 24, 2014.

The Landlord explained that the Canada Post website shows that a notice card was left for each of the Tenants to pick up the hearing package on March 21, 2014 while the Tenants were still residing in the rental suite.

Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up registered mail and this reason alone cannot form the basis of a review application.

As a result, I am satisfied that the Landlord served the hearing package to each Tenant in accordance with the Act, to the rental unit address where they were residing at the time the documents were attempted to be delivered to the Tenants.

At the start of the hearing, the Landlord's agent explained that she was still in the process of gathering all her evidence in relation to her monetary claim for damages to the rental suite and for money owed or compensation for damage or loss under the Act. As a result, she decided that it was better for her to withdraw these portions of her Application as she was still in the process of gathering evidence. As a result, I dismissed these portions of the Landlord's Application with leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for March, 2014?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this fixed term tenancy of one year began on January 20, 2014 and was due to end on January 31, 2015. The Tenants paid \$437.50 as a security deposit on January 16, 2014 and rent was payable under a written tenancy agreement in the amount of \$875.00 on the first day of each month.

The Landlord's agent testified that the Tenants had failed to pay rent for February, 2014 and as a result, the Landlord was able to obtain an Order of Possession and a Monetary Order for the February, 2014 rent through the Direct Request Proceedings conducted on March 3, 2014. As a result the Order of Possession was enforced on March 24, 2014

However, the Landlord's agent testified that the Tenants had also failed to pay for March, 2014 rent which she was not able to claim through the Direct Request Proceedings. Therefore, the Landlord seeks a Monetary Order for March, 2014 unpaid rent in the amount of \$875.00.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement.

In the absence of any evidence provided by the Tenants prior to this hearing or during the hearing, I accept the undisputed testimony of the Landlord on the balance of probabilities, that the Tenants did not pay rent for March, 2014 for which they were liable for even though they were evicted on March 24, 2014.

Therefore, the Landlord is entitled to a Monetary Order for unpaid rent in the amount of **\$875.00**.

As the Landlord had a valid reason to make this Application to recover the unpaid rent, I find that the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$925.00**.

As the Landlord already holds \$437.50 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$487.50**.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of \$487.50. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make voluntary payment.

The remainder of the Landlord's Application is dismissed **with** leave to re-apply

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 10, 2014

Residential Tenancy Branch

