



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, LAT, RR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order authorizing them to change the locks and an order authorizing them to reduce the rent. The landlords filed a cross-application for a monetary order and an order authorizing them to retain the security deposit. The tenants did not participate in the conference call hearing.

The landlords testified that they served the application for dispute resolution and notice of hearing on the tenants by posting it to the door of the rental unit on July 25. Although posting an application of this nature on the door of the rental unit is usually not considered effective service, as monetary claims must be served personally or by registered mail, in this case I find pursuant to section 71(2)(b) that the documents have been sufficiently served for the purposes of this Act. I have made this finding because the landlords testified that the female tenant was in the residence at the time the documents were posted and made a rude gesture and comments to them and I am satisfied that she was aware the documents were on her door. The hearing therefore proceeded in the absence of the tenants.

As the tenants did not appear at the hearing to advance their claim, the claim is dismissed without leave to reapply.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The landlords' undisputed evidence is as follows. The tenancy began on November 1, 2010 at which time the tenants paid a \$350.00 security deposit. The tenants originally paid \$700.00 per month but at some point the parties verbally agreed that the rent

would increase to \$800.00 per month and the tenants paid this increased rent for a 32 month period. The parties were involved in a hearing on May 2, 2014 and in a decision issued on May 9, the arbitrator ordered that the tenants recover \$3,200.00 representing overpayment of \$100.00 per month for 32 months.

This award caused the landlords to search their financial records and at this hearing, they presented evidence that the tenant failed to pay any rent whatsoever in the months of April 2012, September 2012, October 2012, November 2012 and February 2013. They testified that the tenants paid their rent through direct deposit into their bank account and these months showed no deposit. The landlords seek to recover \$3,500.00 which represents 5 months of rent at a rate of \$700.00 per month.

The landlords further testified that they accepted a ring of undetermined value in lieu of rent for June 2013 and July 2013. They seek to recover the \$100.00 they had to return to the tenants for overpayment in June and July 2013 as the tenant did not overpay them for those months and also seek to recover the \$100.00 they were ordered to reimburse the tenants for each of April 2012, September 2012, October 2012, November 2012 and February 2013 when the tenants paid no rent whatsoever.

The landlords also seek to recover the filing fee paid to bring their application.

Analysis

I accept the undisputed testimony of the landlords. I find that the tenants failed to pay rent in the months of April 2012, September 2012, October 2012, November 2012 and February 2013 and I find the landlords are entitled to recover \$700.00 for each of those months. I award the landlords \$3,500.00.

I find that the landlords were ordered to repay the tenants \$100.00 in rental overpayment for each of the aforementioned 5 months as well as June and July 2013 and I find that the landlords should recover the \$100.00 they repaid to the tenants. I award the landlords \$700.00.

As the landlords have succeeded in their claim, I find they should recover the \$50.00 filing fee and I award them that sum.

Conclusion

The tenants' claim is dismissed without leave to reapply. The landlords have been awarded \$4,250.00. I order the landlords to retain the \$350.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for

the balance of \$3,900.00. 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: September 16, 2014

Residential Tenancy Branch

