



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call in response to the Landlords' Application for Dispute Resolution (the "Application") made on September 13, 2017 for a Monetary Order for: damage to the rental unit; for unpaid rent; to keep all of the Tenants' security and pet damage deposits; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement; and to recover the filing fee from the Tenants.

One of the Landlords appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Tenants during the 34 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the Landlords' Application to the Tenants.

The Landlord testified that he served a copy of his Application and the Hearing Package to each Tenant by registered mail on September 16, 2017. The Landlord provided the Canada Post tracking numbers into oral evidence which is recorded on the front page of this Decision. The Landlord testified that these were received and signed for by the Tenants on September 20, 2017. Based on the undisputed evidence before me, I find the Tenants were served notice of this hearing pursuant to Section 89(1) (c) of the Act.

The parties named on the Landlords' Application for this hearing had previously appeared for a hearing with me on December 14, 2016. In that hearing, I determined the Tenant's monetary claim for compensation, which was subsequently dismissed. The Tenants had applied for the return of their security and pet damage deposits for determination in that hearing. However, as the Landlords had filed to keep these monies, that issue could only be determined in this hearing.

I noted the Landlords had not provided any documentary evidence prior to this hearing or a detailed breakdown of their monetary claim as required by the Rules of Procedure. The Landlord stated that he had provided evidence to support his claim for damages to the rental unit, but this was not before me. I also noted from the electronic records pertaining to this file that there was no record of any evidence being received by the

Residential Tenancy Branch prior to this hearing and the Information Officer noted that she had informed the Landlords that they were required to submit evidence for this hearing separately to the December 2016 hearing.

In the absence of such evidence before me, I declined to deal with the Landlords' monetary claim for damages to the rental unit. However, as the Tenants failed to appear for this hearing, I provide the Landlords leave to re-apply for this portion of the monetary claim. In relation to the Landlords' monetary claim for unpaid rent, I allowed the Landlord to rely on oral evidence and the evidence detailed in my previous hearing to make findings on this issue as follows.

Issue(s) to be Decided

- Are the Landlords entitled to a September 2016 unpaid rent?
- Are the Landlords entitled to keep the Tenant's security and pet damage deposits?

Background and Evidence

The Landlord testified that this tenancy started on October 15, 2015 for the basement portion of the residential home. The parties signed a tenancy agreement for a month to month tenancy and rent was established in the amount of \$900.00 payable on the first day of each month. The Tenants paid a \$450.00 security deposit and a \$450.00 pet damage deposit at the start of the tenancy which the Landlords still retain. These monies are herein referred to as the "Deposits".

The Landlord testified the Tenants had failed to pay rent for September 2016 and had abandoned the rental unit shortly thereafter. In my written Decision dated December 14, 2016, the Tenants acknowledged that they had not paid rent for this period as follows.

"The Tenant confirmed that they vacated the rental unit on September 5, 2016 and informed the Landlord that he could keep their security and pet damage deposits for payment of rent for that month. The Tenant stated that they could not afford to pay rent for September 2016 because they were paying rent for the place they were moving to..."

[Reproduced as written]

In that same decision, the parties had also acknowledged that the Tenants had provided their forwarding address by text message to the Landlords on September 6, 2016. The Landlords now claim for unpaid rent in the amount of \$900.00 for September 2016.

Analysis

Firstly, I find that the Landlords made the Application to keep the Tenants' security deposit within the 15 day time limit required by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Therefore, I accept the evidence before me that the Tenants were required to pay rent for September 2016 and failed to do so. This amount is subsequently awarded to the Landlords. As the Landlords already hold the Tenants' \$900.00 Deposits, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As the Landlords have been successful in proving unpaid rent, the Landlords are also entitled to recover from the Tenants the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. The Landlords are issued with a Monetary Order for this amount. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment.

Conclusion

The Tenants breached the Act by not paying rent. Therefore, the Landlords may keep the Tenants' Deposits and are issued with a Monetary Order for the filing fee. The Landlords' remaining 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 Act.

Dated: March 13, 2017

Residential Tenancy Branch