



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNRL-S, FFL

Introduction

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- an Order of Possession for Breach of a Vacate Clause, pursuant to section 55 of the *Act*;
- a monetary order for unpaid rent pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, service of documents was confirmed. The landlords testified that the Notice of Hearing was served on each of the tenants individually by registered mail sent to the rental unit address on April 28, 2018. They submitted into evidence a Canada Post registered mail receipt with two tracking numbers as proof of this service. The tenants stated that they only picked up the registered mail packages in the morning before this hearing. The tenants stated that they moved out of the rental unit on April 30, 2018 and now live in another city. They did not have time until today to travel back to the post office near the rental unit to pick up the registered mail packages.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or ‘deemed’ received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In this case, the tenants acknowledged that they moved to another city and found it difficult to get to the post office to pick up the registered mail packages. However, the package was available and being held for them at the post office – they opted not to pick it up earlier. This is not a circumstance for which the tenants can rebut the deeming provision of the *Act*. Therefore, I find that the tenants were served with the Notice of Hearing information on May 3, 2018, the fifth day after mailing, in accordance with section 89 of the *Act*.

Both parties had attended a previous hearing on May 7, 2018 regarding the tenants’ application to dispute the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (file number noted on the coversheet of this decision). Only evidence from that hearing, as it had already been exchanged by the parties, was considered in this hearing.

Preliminary Issue – Amendment of Landlords’ Application

At the outset of the hearing, both parties confirmed that the tenants had moved out of the rental unit on April 30, 2018. Therefore, the landlords amended their application by withdrawing their request for an Order of Possession as this was no longer necessary. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlords’ application to withdraw this part of their claim.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

All the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

A written tenancy agreement, signed by all parties on April 24, 2017 was submitted into evidence. Both parties agreed to the following facts provided in the written tenancy agreement. This tenancy began on May 20, 2017 for a fixed term ending on April 30, 2018. Monthly rent in the amount of \$1,700.00 was payable on the fifth day of each month. A security deposit of \$850.00 and a pet deposit of \$150.00 was paid by the tenants at the start of the tenancy and continues to be held by the landlords.

Both parties confirmed that rent had not been paid for the period of April 6 to 30, 2018. The tenants testified that it was their belief that they were entitled to the last month of rent free, in compensation, since the landlords were selling the property.

The landlords confirmed that there had been prior discussions regarding an offer of free rent if the tenants had moved out earlier in the tenancy, however, they testified that a Two Month Notice to End Tenancy for Landlord's Use had never been issued to the tenants. This was confirmed by the tenants.

The landlords are requesting payment of the prorated rent owing for the period of April 6 to 30, 2018 in the amount of \$1,416.67, to be partially satisfied by retaining the security and pet deposits that were paid by the tenants at move-in.

Analysis

As the landlords submitted their dispute application on April 23, 2018, specifically requesting to retain the security and pet deposits in partial satisfaction against their claim of unpaid rent, and given that the tenancy ended April 30, 2018, I find that the landlords filed their application claiming against the deposits in accordance with section 38(1) of the *Act*.

Having found that the landlords are entitled to make a claim against the deposits, I now turn my mind to determining whether or not the tenants were entitled to withhold their last month's rent. The tenants argue that they believed they were entitled to one month's rent as compensation due to the fact that the landlords sold their property, and they had earlier discussions with the landlord about receiving free rent in compensation.

Section 51(1) of the *Act* provides the following compensation to tenants:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, both parties agree that a Notice to End Tenancy for Landlord's Use of Property, under section 49 of the *Act*, was never issued, and therefore never received, by the tenants. The tenants were issued with a 10 Day Notice to End Tenancy for Unpaid Rent, which does not offer any compensatory provisions under the *Act*.

As the tenants never received a Notice to End Tenancy for Landlord's Use under section 49 of the *Act*, I find that the tenants were not entitled to compensation in the amount of one month's rent pursuant to section 51(1) of the *Act*. Further to this, I find that there is insufficient evidence before me to conclude that the tenants had any other right to withhold rent for the partial month of April 2018, and therefore they remained obligated to pay the prorated amount of rent for April 2018 when due.

In light of the above, I find that the landlords are entitled to a monetary award in the amount of \$1,416.67 for the prorated amount of unpaid rent for the month of April 2018.

The landlords continue to retain the tenants' security and pet deposits totalling \$1,000.00. No interest is payable on the deposits during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' entire combined deposits of \$1,000.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlords' favour for the remaining amount of the monetary award owing.

Further to this, as the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenants. A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlords as a monetary award	\$1,416.67
Landlords to retain security and pet deposits in partial satisfaction of monetary award	(1,000.00)
Remaining amount of unpaid rent owing to the landlords	= 416.67
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlords	\$516.67

Conclusion

I order the landlords to retain the \$850.00 security deposit and \$150.00 pet deposit for this tenancy in partial satisfaction of my finding that the landlords are entitled to a monetary award of \$1,416.67 for the prorated amount of unpaid rent owing for the month of April 2018.

I also issue a Monetary Order in the landlords' favour against the tenants in the amount of \$516.67 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlords' filing fee for this application.

The landlords are provided with this Order in the above terms and 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: June 4, 2018

Residential Tenancy Branch