



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- repayment of the filing fee pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open for 11 minutes in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided undisputed testimony that he served the tenants the notice of dispute resolution package by registered mail in December 2017. I find that the tenants were deemed served with this package in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to repayment of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified that this periodic tenancy began on July 23, 2017 and ended on December 1, 2017. Monthly rent in the amount of \$1,775.00 was payable on the first day of each month. A security deposit of \$887.50 was paid by the tenants to the landlord. No documents were submitted into evidence.

The landlord testified that on November 6, 2017 the tenants gave notice to end their tenancy effective December 1, 2017 via text message. The landlord testified that at some point in December 2017, the tenants wrote a letter to the landlord authorizing him to retain their damage deposit in part satisfaction of rent owed for the month of December 2017.

The landlord testified that he has been in contact with the tenants since December 2017 and that they have promised to pay the outstanding rent for December 2017 but have not done so. The landlord testified that he thought the tenants would pay the outstanding rent prior to this hearing, and that is why he did not upload any physical evidence.

Analysis

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

The landlord provided undisputed testimony that the tenants provided less than one month's notice to end the tenancy. Based on the testimony of the landlord I find that the tenants have breached section 45 of the *Act* by giving insufficient notice to end the tenancy. The tenants are therefore liable for December 2017's rent in the amount of \$1,775.00.

Furthermore, section 52 of the *Act* states that in order for a notice to end tenancy to be effective it must:

- be signed and dated by the tenant giving the notice;
- give the address of the rental unit;
- state the effective date of the notice; and
- state the grounds for ending the tenancy.

As notice was given via text message it could not have been signed, thereby breaching section 52 of the *Act* and rendering the Notice void. As per the tenancy agreement, the tenants continued to be responsible for rent for December 2017.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$887.50 in part satisfaction of his monetary claim for unpaid rent against the tenants.

As the landlord's application was successful, I find that he is entitled to recover the filing fee for this application from the tenants in the amount of \$100.00.

Conclusion

Pursuant to section 67 and 72 of the *Act*, I issue a monetary Order under the following terms, which allows the landlord to recover damages for unpaid rent, the filing fee for this application, and to retain the tenants' entire security deposit:

Item	Amount
December 2017 rent	\$1,775.00
Filing fee	\$100.00
Less security deposit	-\$887.50
Total	\$987.50

The landlord is 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 18, 2018

Residential Tenancy Branch