



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, FFL

Introduction

On May 16, 2018, the Landlord applied for a Dispute Resolution proceeding seeking the following under the Act, regulation, or tenancy agreement:

- An Order of Possession for Landlord's Use of Property;
- A Monetary Order for unpaid rent;
- To retain the security deposit; and
- To recover the filing fee.

M.K. and H.K. attended the hearing as the Landlords and D.A. and A.S. attended the hearing as the Tenants. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package to D.A. by registered mail on May 25, 2018 and D.A confirmed that he received this package. In accordance with sections 89 and 90 of the Act, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on September 1, 2017 and the Tenant vacated the rental unit on June 1, 2018. Rent was established at \$1,200.00 per month and was due on the first of each month. A security deposit of \$600.00 was also paid. D.A. confirmed this information.

The Landlord submitted that D.A. agreed and signed for receipt of the Two Month Notice for Landlord's Use of Property (the "Notice") on March 9, 2018. The effective date of the Notice was May 31, 2018 and the reason the Landlord checked off on the Notice was because "The Landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." He advised that D.A. entertained the thought of leaving the rental unit in May but he eventually did not. He stated that D.A. did not want to pay any rent and did not pay April or May 2018 rent.

D.A. was reluctant to sign for receipt of the Notice as there were repair issues that were required in the rental unit, and he was advised that he would be compensated for those issues by the Landlord. He submitted that he had a verbal agreement with the Landlord that April rent was not due in exchange for signing for receipt of the Notice. The Landlord advised that there was no verbal agreement regarding not paying rent for April.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

With respect to the Landlord's request for an Order of Possession, as the Tenant has vacated the rental unit prior to the hearing, this is a moot point and an Order of Possession is not necessary.

With respect to the Landlord's request for a Monetary Order for April 2018 rent, Section 26 of the Act states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenant has a right to deduct all or a portion of the rent.

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

As outlined above, the undisputed evidence is that the rent for April 2018 was not paid in full when it was due. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the Tenant has failed to provide any evidence at all that he had any agreement with the landlord. As such, I find that the Landlord is entitled to a Monetary Order in the amount of **\$1,200.00**.

Section 51 of the Act allows a Tenant to withhold the last month's rent after being served a Two Month Notice to End Tenancy for Landlord's use of Property. As the Landlord's Notice is valid and as the Tenant has withheld May 2018 rent, I am satisfied that the requirements of the Act have been complied with and there is no debt further outstanding.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Any references, by the Tenant, to claims for compensation due to required repairs to the rental unit were not considered in the Application before me as the Tenant had not made his own Application. As such, these claims remain open for the Tenant to file against the Landlord if he chooses to do so.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

April 2018 – Outstanding rent	\$1,200.00
Recovery of filing fee	\$100.00
Less security deposit	-\$600.00
TOTAL MONETARY AWARD	\$700.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$700.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: July 11, 2018

Residential Tenancy Branch