



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for unpaid rent, to retain the security deposit towards unpaid rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenants during the approximately 13-minute hearing. As the Tenants were not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing documents, along with the Landlord’s evidence package was sent to the Tenants by registered mail on March 2, 2018 at the forwarding address provided by the Tenants.

The Landlord testified that the Tenants’ forwarding address was provided to them on a letter dated March 29, 2018 in which the Tenants advised the Landlord they had vacated the rental unit.

The Landlord submitted mail receipts into evidence that show that the Notice of Hearing documents were not sent by registered mail, but instead were sent to each Tenant by Xpresspost.

Although the Landlord testified that a signature was required upon delivery, the Canada Post website confirms the packages as delivered without a signature upon delivery.

Despite the Landlord not sending the Notice of Hearing documents by registered mail in accordance with Section 89(1) of the *Act*, I accept the testimony of the Landlord and the evidence before me that the packages were delivered to the forwarding address provided by the Tenants and not returned to the Landlord.

As such, I find that the Tenants were sufficiently served pursuant to Section 71(2)(c).

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards the rent owing?

Is the Landlord entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on November 26, 2016. Monthly rent was \$800.00 per month and a security deposit of \$400.00 was paid at the outset of the tenancy.

The tenancy agreement was submitted into evidence by the Landlord and confirms the details of the tenancy as stated by the Landlord. The tenancy agreement was initially between the Landlord and one of the Tenants, but the Landlord testified that the second Tenant was added to the agreement at a later date.

The Landlord testified that rent was not paid for February or March 2018. She stated that a 10 Day Notice to End Tenancy for Unpaid Rent was issued, but did not submit or provide details on any 10 Day Notices.

The Landlord stated that one month of rent payment was provided by the Tenants, but the cheque was returned as non-sufficient funds.

The Landlord submitted the account ledger into evidence which shows no rent payment in February 2018 and a payment that was reversed in March 2018.

On March 29, 2018, the Landlord stated that the Tenants provided a letter that they had moved out of the rental unit and that the Landlord could retain the security deposit towards the unpaid rent owed. The Tenants also provided their forwarding address in this letter.

The Landlord stated that this letter was submitted into evidence to the Residential Tenancy Branch, along with the Landlord's other evidence. However, upon review of the evidence submitted, the letter was not included.

Along with rent for February and March 2018, the Landlord is also claiming for unpaid rent in April 2018, due to the Tenants not providing one full month of notice to vacate the rental unit.

The Landlord stated that they posted the advertisement for the rental unit online on the same day they received the letter from the Tenants, March 29, 2018. They re-advertised the rental unit for monthly rent of \$850.00 and were able to rent the unit for May 1, 2018. As they did not have tenants in the unit for April 2018, they are claiming a rental loss in the amount of \$800.00.

Analysis

I accept the undisputed testimony of the Landlord that the Tenants vacated the rental unit in March 2018 and did not notify the Landlord until March 29, 2018. Despite the letter not being submitted into evidence, the Landlord provided affirmed testimony that the Tenants provided permission in writing to keep the security deposit towards rent owing.

As such, I find that the Tenants provided permission to the Landlord in writing in accordance with Section 38(4)(a) of the *Act*, and therefore I find that the Landlord has already been allowed to retain the \$400.00 security deposit towards the total amount owing.

I also accept that the Tenants resided in the rental unit for February and March 2018 and did not pay rent for that time. Therefore, pursuant to Section 67 of the *Act*, I find that the Tenants owe the Landlord two months of rent for a total of \$1,600.00.

Although the Landlord is claiming for loss of rental income for April 2018, I find insufficient evidence before me to establish that the Tenants are responsible for rent for April 2018. As the Landlord stated that at least one 10 Day Notice was provided to the Tenants, but no notices to end tenancy were submitted into evidence, I am unable to determine whether the Landlord should have been aware that the Tenants would be vacating prior to receiving notification from the Tenants on March 29, 2018.

If a 10 Day Notice was issued after rent was not paid in February 2018 and/or March 2018, the rental unit should have been advertised for re-rental earlier than March 29, 2018.

I also note that a Landlord has a duty to minimize their losses in accordance with Section 7(2) of the *Act*, and by advertising the rental unit for a higher monthly rent, I find that the potential loss was not reasonably mitigated. As such, for the reasons outlined above, I decline to award compensation for rent for April 2018.

As the Landlord was partially successful in their application, I award them the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

A Monetary Order will be granted to the Landlord in the amount outlined below.

February 2018 rent	\$800.00
March 2018 rent	\$800.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$400.00)</i>
Total owing to Landlord	\$1,300.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,300.00** for rent owed for February and March 2018, as well as for the recovery of the filing fee paid for this application.

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: August 15, 2018

Residential Tenancy Branch