



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTGATE CAPITAL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord's agent appeared but there was no appearance on part of the tenants.

The landlord testified that the hearing documents were sent to each of the tenants by registered mail on August 23, 2018 at the rental unit address and the tenants were still residing in the rental unit at that time. The registered mail was returned as unclaimed. The landlord provided copies of the registered mail receipts, including tracking numbers, as proof of service.

Section 90 of the Act deems a person to be in receipt of mail five days after mailing even if the person refuses to accept or pick up their mail. Accordingly, I found the tenants to be deemed served with notification of this proceeding and I continued to hear from the landlord without the tenants present.

The landlord stated the tenants moved out on September 20, 2018 and the landlord no longer requires an Order of Possession. Accordingly, I do not provide one with this decision.

The landlord requested a Monetary Order for August 2018 rent, as claimed, and requested the application be amended to include authorization to retain the tenants' security deposit. The landlord's request for amendment is non-prejudicial to the tenants since it would reduce the Monetary Order and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on March 5, 2018 and the tenants paid a security deposit of \$550.00. The tenants were required to pay rent of \$1,100.00 on the first day of every month. The tenants failed to pay August 2018 rent and on August 6, 2018 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the rental unit door. The tenants did not pay the outstanding rent or file to dispute the 10 Day Notice. Rather, the tenants vacated the rental unit on September 20, 2018.

The landlord made a claim for unpaid rent of \$1,100.00 for the month of August 2018 and requested authorization to retain the security deposit.

The landlord provided a copy of a tenants' ledger, the 10 Day Notice, and a signed Proof of Service for the 10 Day Notice as documentary evidence in support of the landlord's claim.

The landlord indicated the landlord suffered further loss of rent for September 2018 and costs to clean and repair the unit. The landlord did not seek amendment of the application to recover such losses and I informed the landlord that the landlord is at liberty to make another application to recover such losses.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any information to suggest the tenants had a legal right to withhold rent.

I accept the evidence before me that the tenants were required to pay rent of \$1,100.00 on the first day of every month and the tenant has failed to do so for the month of August 2018. I also accept that despite serving the tenants with a 10 Day Notice the tenants did not pay the outstanding rent for August 2018. Therefore, I find the landlord

entitled to recover unpaid rent for the month of August 2018 and I award the landlord \$1,100.00 as requested.

I also award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid Rent: August 2018	\$1,100.00
Filing fee	100.00
Less: security deposit	<u>(550.00)</u>
Monetary Order	\$ 650.00

Conclusion

The landlord is authorized to retain the tenants' security deposit and is provided a Monetary Order for the balance of \$650.00 to serve and enforce upon the tenants.

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: October 11, 2018

Residential Tenancy Branch