



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, FFL

Introduction

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

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord named in this application and that he had permission to speak on her behalf.

The landlord testified that the tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on November 20, 2018, by way of registered mail to the rental unit. The landlord provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were each deemed served with the landlord's application on November 25, 2018, five days after their registered mailing.

At the outset of the hearing, the landlord confirmed that the tenants had already vacated the rental unit and he did not require an order of possession. I notified him that this portion of the landlord's application was dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord authorized to retain the tenants' security deposit in partial satisfaction of the monetary award?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on September 15, 2014 and ended on November 26, 2018. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. A move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was not completed. No written forwarding address was provided by the tenants when they vacated the rental unit. The landlord did not have any written permission to keep any part of the tenants' security deposit. The landlord filed this application on November 16, 2018.

The landlord seeks a monetary order of \$1,350.00 for November 2018 unpaid rent and to recover the \$100.00 filing fee paid for this application. He said that the tenants failed to pay rent of \$1,350.00 for November 2018.

Analysis

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, as per the parties' written tenancy agreement in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,350.00 for November 2018. Rent is due on November 1, 2018. Therefore, I find that the landlord is entitled to rental arrears of \$1,350.00 for November 2018.

The landlord continues to hold the tenants' security deposit of \$675.00. No interest is payable on the deposit during this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I find that the landlord is entitled to retain the tenants' entire security deposit of \$675.00 in partial satisfaction of the monetary award.

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

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$675.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$775.00 against the tenants. 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.

The landlord's application for an order of possession for unpaid rent and cause is dismissed without leave to reapply.

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: January 04, 2019

Residential Tenancy Branch