



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 monetary compensation for unpaid rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Agent”) was present for the teleconference hearing, while no one called in for the Tenants during the approximately 15-minute hearing. The Agent was affirmed to be truthful in his testimony and stated that the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence was sent to the Tenants by registered mail. The Tenants did not submit any evidence prior to the hearing.

The registered mail tracking number was provided by the Agent and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered. The signatory name is stated as the last name of the Tenants. As such, I find that the Tenants were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Agent provided undisputed testimony on the tenancy which was also confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 10, 2017 and was for an initial fixed-term of one year set to end on August 31, 2018. Monthly rent in the amount of \$3,300.00 was due on the first day of each month. A security deposit of \$1,650.00 was paid at the outset of the tenancy and the Landlord is still in possession of the full security deposit amount.

The Agent stated that the Tenants were often late in paying rent and after some discussion the parties agreed to end the tenancy through a mutual agreement. The mutual agreement, signed May 23, 2018, was submitted into evidence and states that the tenancy will end on August 31, 2018.

The Agent testified that the Tenants moved out of the rental unit sometime in late July 2018. He stated that the Tenants did not provide notice that they would be moving out prior to the agreed upon date of August 31, 2018.

The Landlord has applied for a total of \$7,900.00 in unpaid rent. The Agent testified that \$2,000.00 in rent was paid for June 2018, leaving an amount of \$1,300.00 still owing. He also stated that no money was paid towards rent owing for July 2018 or August 2018.

The Landlord submitted into evidence text message communication with the Tenants regarding late rent payments. A summary of the rent payments was also submitted which notes a payment of \$2,000.00 on July 3, 2018 for June 2018 rent, and no payments for July and August 2018. The Landlord also submitted banking information showing rent payments and times when the rent cheques were returned from the bank.

A 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was submitted into evidence. The notice, dated July 27, 2018 states that rent in the amount of \$4,600.00 was unpaid as due on July 1, 2018. The 10 Day Notice stated the effective end of tenancy date as August 7, 2018.

The Agent stated that the Landlord was unable to re-rent the rental unit in August 2018 due to the cleaning and repairs that were required. The Landlord submitted photos taken before and after the tenancy as well as an invoice dated August 28, 2018 for painting and floor repairs in the amount of \$2,499.84.

The Agent stated that the Tenants did not provide a forwarding address. However, the Landlord became aware of the Tenants' new address from a friend which was confirmed by attending the home. The Agent stated that it was at the end of August 2018 when the Landlord became aware of the Tenants' new address.

Analysis

The Landlord is claiming \$7,900.00 in unpaid rent. I accept the tenancy agreement as evidence that monthly rent of \$3,300.00 was due on the first day of each month. I also find sufficient evidence before me to determine that rent was partially paid for June 2018 and unpaid for July and August 2018. Therefore, I find that the Tenants owe \$1,300.00 for June 2018 and \$3,300.00 for July 2018.

As for August 2018 rent, I find that the Tenants are responsible for rent in the amount of \$3,300.00. Although the Tenants moved out in July 2018, I find it reasonable that the Landlord would have expected the tenancy to end in August 2018 due to the 10 Day Notice or the mutual agreement to end the tenancy. I also note that tenants are responsible for rent up to when they may have legally ended the tenancy. As stated in Section 45(2)(b) of the *Act*, a tenant may not end a fixed term tenancy prior to the end of the term. As such, I find that the Tenants are responsible for rent through to the end of the fixed term of August 31, 2018.

Although a party claiming a loss has a duty to mitigate their loss as stated in Section 7 of the *Act*, I accept the evidence that demonstrates that repairs and cleaning were required in the rental unit during August 2018. I also accept that the Landlord was not notified that the Tenants were leaving earlier than expected and thus was not able to advertise the rental unit for rent for August 1, 2018.

Based on the testimony of the Agent and the evidence of the Landlord, I find that the Landlord has established their claim for monetary compensation for unpaid rent. Pursuant to Section 38(4)(b) of the *Act*, the Landlord may retain the security deposit towards compensation owed.

As the Landlord was successful in the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below.

June 2018 rent	\$1,300.00
July 2018 rent	\$3,300.00
August 2018 rent	\$3,300.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,650.00)</i>
Total owing to Landlord	\$6,350.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$6,350.00** for rent owed for June, July and August 2018 as well as the recovery of the filing fee for the Application for Dispute Resolution. 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: January 18, 2019

Residential Tenancy Branch