



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On October 11, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.T. attended the hearing as an agent for the Landlord. The Tenants did not attend the hearing. All in attendance provided a solemn affirmation.

J.T. advised that a Notice of Hearing package and evidence was served by hand on October 16, 2018 to each Tenant and the Landlord witnessed this service. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing package and evidence.

All parties 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 a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.T. stated that the tenancy started on October 1, 2017 and ended on October 16, 2018 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,200.00 per month, due on the first day of each month. A security deposit of \$600.00 was also paid.

He advised that the Tenants did not pay September or October 2018 rent at all. As well he advised that they did not leave the rental unit in a satisfactory condition. By the time he was able to clean and repair the rental unit, he was not able to re-rent the premises until November 11, 2018. As such, he is seeking to recover rent totalling **\$3,600.00** for these months. In addition, he is seeking to recover the filing fee of **\$100.00** for a previous dispute resolution hearing (the related decision file number is on the first page of this decision).

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.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

The undisputed evidence before me is that the rent was not paid in full when it was due and there is no evidence before me that the Tenants were entitled to withhold the rent. As such, I am satisfied that the Landlord is entitled to a monetary award for the rent arrears for September and October 2018, and I grant the Landlord a monetary award in the amount of **\$2,400.00**.

With respect to November 2018 rent, I am satisfied from the undisputed evidence that the Landlord needed time to clean and repair the rental unit and that he was unable to re-rent it until November 11, 2018 as a result. Consequently, I find that the Landlord is entitled to a monetary award for the rental loss suffered for the 10 days in November 2018. As rent was \$1,200.00 per month, I find that the Landlord is entitled to a monetary award in the amount of **\$400.00**.

Regarding the Landlord's claim in the amount of \$100.00 for recovery of the filing fee from a previous decision, as that was already awarded in the last hearing, this portion of the Landlord's claim is dismissed in its entirety.

As the Landlord was successful in this Application, I find that they are 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 in arrears.

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 Tenants to the Landlord

September and October 2018 rent arrears	\$2,400.00
November 2018 rental loss	\$400.00
Security deposit	-\$600.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,300.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,300.00** 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: February 8, 2019

Residential Tenancy Branch