



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "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 she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on January 22, 2019 she forwarded the landlord's application for dispute resolution hearing package ("application") via registered mail to the tenants. The landlord provided Canada Post receipts and tracking numbers as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application and supporting documents on January 27, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on April 1, 2016 on a fixed term until March 31, 2017 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,050.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$487.50 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The landlord testified that on December 5, 2018 she forwarded the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") via registered mail to the tenants. The notice indicates an effective move-out-date of December 15, 2018. Based on the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenants have been deemed served with the 10 Day Notice on December 10, 2018, the fifth day after its registered mailing.

During the hearing, the landlord testified that she seeks a monetary order in the total amount of \$375.00. The landlord seeks \$350.00 for December rent arrears and \$25.00 for an administration fee for the return of the tenants' cheque. The landlord testified that although the tenants have paid January and February 2019 rent, December rent arrears in the amount of \$350.00 and the administration fee in the amount of \$25.00 remaining outstanding. The landlord testified that she issued receipts for the January and February 2019 payments indicating it was for "use and occupancy only." The landlord also seeks to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent or file an application to dispute the notice, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,050.00. I find the landlord provided undisputed evidence that the tenants failed to pay December rent arrears. Therefore, I find that the landlord is entitled to \$350.00 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 for returned cheques if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, I find the landlord is entitled to recover an administration fee in the amount of \$25.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$475.00

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$475.00 of the \$487.50 security deposit in full satisfaction of the monetary award. The tenants are entitled to the remaining \$12.50 security deposit balance.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

The landlord is entitled to \$475.00. I order the landlord to retain \$475.00 from the \$487.50 security deposit in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposit. I therefore grant the tenants a monetary order for the balance of the deposit, in the amount of \$12.50.

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: March 05, 2019

Residential Tenancy Branch