



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to having served a 10 Day Notice to End the Tenancy for Unpaid Rent dated December 15, 2018 (the "10 Day Notice"), and
- a monetary order for rent, applying the security deposit to the claim.

However, the Tenants had moved out of the rental unit by the time of the hearing, so the Landlord's claim for the order of possession was not considered; the Landlord said he was not seeking an order of possession.

The Landlord and his daughter, J.S., appeared at the teleconference hearing and gave affirmed testimony. The Tenants did not attend. I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord and his daughter were given the opportunity to provide their evidence orally and to ask and answer questions. I 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.

Preliminary and Procedural Matters

The Landlord provided his email addresses at the outset of the hearing and confirmed his understanding that the decision would be emailed to him and mailed to the Tenants.

The Landlord said that the Tenants moved out of the rental unit on February 1, 2019, and that they did not pay rent for that month. The Landlord said he is not in need of an order of possession anymore, so I dismissed this claim without leave to reapply.

The Landlord said he served the Tenants with his Application and documentary evidence in person at the rental unit on January 29, 2019, and by registered mail dated January 29, 2019. The Canada Post website indicates that notices of the registered mail packages were delivered to the Tenants on January 31, 2019. According to section 90 of the Act, the registered mail packages were deemed to have been served on the Tenants five days after mailing.

Given the Landlord's evidence that he delivered the Application and documentary evidence to them in person on January 29, 2019, I further find that the Tenants were served with the Application and documentary evidence at the rental unit before they moved on February 1, 2019.

Issue to be Decided

- Is the Landlord entitled to a monetary order pursuant to section 67 of the *Act*, and if so, in what amount?
- Is the Landlord entitled to keep the Tenants' security deposit pursuant to the *Act*?

Background and Evidence

The Landlord said that the tenancy started on January 1, 2016, and that the rent was \$1,900.00, which was due on the first of the month. The Landlord said that the Tenants paid a security deposit of \$900.00, but no pet damage deposit.

The 10 Day Notice is dated December 15, 2018; however, it says that it was served on the Tenants on December 5, 2018, and that the effective date of the notice was December 15, 2018. I find it logical and reasonable to infer that the Landlord erroneously dated the form December 15, instead of December 5, 2019. As such, pursuant to section 68 of the *Act*, I find it reasonable to amend the date of the 10 Day Notice to December 5, 2018, as it does not affect the outcome of anything, given the circumstances before me.

Pursuant to section 46 of the *Act*, I find that the Tenants had five days from December 5, 2018, to pay the rent owing or to dispute the 10 Day Notice by making application for dispute resolution. There is no evidence before me that the Tenants did either of these things. Accordingly, I find the Tenants were overholding by occupying the rental unit beyond December 15, 2018. According to section 57 of the *Act*, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The Landlord said the Tenants always paid rent in cash and did not want receipts. Pursuant to section 26 of the Act, a landlord is obliged to provide receipts for cash payments, even if the tenant does not want receipts. As evidence of the rent owing, the Landlord submitted copies of texts he exchanged with the Tenant, S.B., dated June 16 and 21, 2018 and September 23, 2018. In these texts, the Tenant admitted to owing the Landlord rent. In the June 16, 2018 text exchange the Parties stated:

Landlord: So you have money for me,

Tenant: I'm just waiting for the guy to come pay for the car.

On June 21, the exchange was:

Landlord: I still haven't seen money?

Tenant: Me neither.

The September 23, 2018 text from the Tenant he stated:

Do you really think I forgot I owe you money stop bugging me when I have it you'll have it I go to work on Monday and if I gave you money for this month it's for this month.

[reproduced as written]

The Landlord said his only way to know how much they paid each month was to keep track of it on a sheet he saved, on which he wrote the amount of rent they paid each month. The Landlord did not submit this list or a completed monetary worksheet. However, in his Application for Dispute Resolution, which he served on the Tenants, he stated that the Tenants owe him the following amounts in unpaid rent:

They owe me:

\$1900 for January 2018

\$1900 for February 2018

\$900 for May 2018

\$400 for June 2018

\$200 for August 2018

\$1900 for November 2018

\$1900 for December 2018

\$1900 for January 2019

That is a total of \$11000, but they did pay an extra \$100 in March, April, July, and October of 2018.

As noted above, the Landlord also said that the Tenants did not pay the \$1900.00 in rent for February 2019. The Landlord said that the Tenants did not provide their forwarding address, but he said he is aware of where they work. Regardless of knowing where they work, the landlord must follow the rules of the Small Claims court to serve tenants with a monetary order, if the landlord wishes to enforce the order in Small Claims court. The Landlord must check with that court for information.

Analysis

Based on the undisputed evidence before me and on a balance of probabilities, I find that the Tenants owe unpaid rent to the Landlord in the following amounts: \$11,000.00 - \$400.00 + \$1,900.00 = \$12,500.00.

Under section 38 (4) (b) of the *Act*, a landlord may retain an amount from a security deposit, if after the end of a tenancy “the director orders that the landlord may retain the amount.”

Based on the undisputed evidence before me overall, I award the Landlord with \$12,500.00 in unpaid rent from the Tenants, pursuant to section 67 of the *Act*. I also authorize the Landlord to retain the Tenants’ **\$900.00** security deposit, pursuant to sections 38 (3) (a) and 67 of the *Act*, in partial satisfaction of the Landlord’s monetary claim. I find that this leaves the amount owing by the Tenants to the Landlord as \$11,600.00, which I award to the Landlord.

Conclusion

The Landlord has established a total monetary claim of \$12,500.00, from which I have deducted the Tenants’ \$900.00 security deposit, which has accrued no interest to date.

Accordingly, I award the Landlord a monetary order of **\$11,600.00** pursuant to section 67 of the *Act*. Should the Landlord require enforcement of the monetary order, the Landlord must first serve the Tenants with the monetary order, which may then be filed in the Provincial Court (Small Claims Division) and enforced as an Order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: April 8, 2019

Residential Tenancy Branch