



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On March 6, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with R.K. as an agent for the Landlord. The Tenants attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served each Tenant a Notice of Hearing package and evidence by registered mail on March 6, 2019 and the Tenants confirmed that they received this package. 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.

The Tenants advised that they did not serve their evidence to the Landlord. As the Tenants did not serve their evidence in compliance with the requirements of Rule 3.15 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision. However, the Tenants were still permitted to provide testimony with respect to this 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 unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?
- 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.

The Landlord advised that the tenancy started on December 1, 2016 and ended when the Tenants gave up vacant possession of the rental unit on February 3, 2019. Rent was established at \$900.00 per month, due on the first day of each month. A security deposit of \$300.00 was also paid. He stated that there was never a written tenancy agreement between the parties. He also referenced a previous decision between the parties that was submitted as documentary evidence (the relevant file number is listed on the first page of this decision).

In this decision, it was documented that the Landlord, R.K., and Tenant R.M. attended that prior hearing. All parties testified and agreed that rent was owed in the amount of \$900.00, due on the first of each month. Based on the evidence and testimony of the parties, the Arbitrator was satisfied that the Tenants only paid half of November 2018 rent, and they did not pay December 2018 or January 2019 rent either. Consequently, an Order of Possession was granted to the Landlord.

During the most current hearing, Tenant R.M. advised that he paid November rent in full by cash; however, he did not have proof of this payment. He also stated that the Arbitrator at the previous hearing did not give him a chance to be heard. He alleges that the Landlord made false statements in the previous hearing, with respect to half of November 2018 rent being paid only. As well, he submitted that Tenant H.S. was in India at the time the Landlord falsely testified that H.S. had paid half of November 2018 rent in cash. When pressed why the Landlord would issue a 10 Day Notice for Unpaid Rent if November or December 2018 rent were paid in full, why he did not mention that he paid rent in full in November 2018 in the previous hearing, or why he did not apply

for review consideration if he felt like there was an issue with the previous decision, he could not provide any compelling answers for these questions.

Tenant H.S. then provided testimony and confirmed that he was in India in November 2018. As such, he could not confirm how much rent was paid in November 2018. However, he acknowledged that Tenant R.M. was always responsible for paying the rent each month.

The Landlord submitted that he is seeking compensation in the amount of **\$3,150.00** for the lost rent for half of November 2018, for December 2018, and for January and February 2019.

Both parties agreed that the Tenants did not provide a forwarding address in writing to the Landlord. However, the Landlord discovered where the Tenants moved to and the Tenants confirmed that the address for service was their correct address.

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 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Tenants never provided the Landlord with their forwarding address in writing. As such, I am satisfied that the doubling provisions do not apply in this instance.

Regarding the Landlord's claim for lost rent, there is no compelling or persuasive evidence to support Tenant R.M.'s submissions that he paid rent in full for November 2018 or that rent was paid for any month thereafter. Furthermore, had he paid rent for

November 2018, it does not make sense to me why this was not mentioned during the previous hearing, why he did not apply for review consideration of the decision of the previous hearing, or why rent was not paid in December 2018 or January 2019.

Given that Tenant R.M.'s submissions were not logical, that no evidence was provided to support his claims, and that Tenant H.S.'s testimony could not substantiate Tenant R.M.'s statements that rent had been paid as alleged, I am satisfied of the facts documented in the previous decision. Consequently, I grant the Landlord a monetary award in the amount of **\$3,150.00** for rent owing for the balance of November 2018, for December 2018, and for January and February 2019.

As the Landlord was successful in his claims, I find that the Landlord is 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 awarded.

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

November 2018 balance of rent	\$450.00
December 2018 rent	\$900.00
January 2019 rent	\$900.00
February 2019 rent	\$900.00
Security deposit	-\$300.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,950.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,950.00** 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: May 22, 2019

Residential Tenancy Branch