



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented at the hearing by his agent, DM ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants did not attend this hearing although I left the teleconference hearing connection open until 10:00 a.m. to enable the tenants to call into this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he sent each of the tenants the Notice of dispute resolution hearing ("Notice") by registered mail on May 30, 2019. The Notices were sent to the overseas address provided for the two tenants on the condition inspection report dated May 17, 2019. No copy of the condition inspection report was provided as evidence, however the landlord read out the forwarding address on the record to confirm. The tracking numbers for each of the mailings is provided on the cover page of this decision. I am satisfied the tenants are deemed served with the Notices on June 4, 2019, five days after mailing, in accordance with sections 89 and 90 of the Act.

Preliminary Issue

The tenancy agreement provided as evidence by the landlord indicates the applicant in this matter is not the named landlord as written on the tenancy agreement. In accordance with section 64(3)(c), I amended the application for dispute resolution to include the properly named landlord as reflected on the cover page of this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord provided the following evidence and testimony. This one year fixed term tenancy began on January 1, 2018 becoming month to month at the end of the fixed term. Rent was initially set at \$1900.00 per month, but was raised to \$1,945.00 month on January 14, 2019 to commence May 1, 2019. A security deposit of \$900.00 was collected at the commencement of the tenancy which the landlord continues to hold. A condition inspection report was also completed when the tenancy began however it was not supplied as evidence in this proceeding.

The tenants sent the landlord a notice to end tenancy dated April 29, 2019 with an effective (Move-out) date of May 17th. The landlord testified he received it by regular mail on May 2 or 3. The tenants did not provide rent for the month of May when they sent the notice to end tenancy, nor did they pay any rent for that month. The letter also indicates the tenants would be available for a condition inspection report at 5:00 on May 17th. The landlord did not provide a copy of this notice in his evidence.

The landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent on May 5, 2019 by posting it to the tenant's door the same day. The effective date on the landlord's 10 Day Notice was May 18, 2019. The 10 Day Notice indicates the tenants failed to pay \$1,947.50 in rent that was due on May 1, 2019. The landlord testified the tenants neither paid the unpaid rent nor filed for dispute resolution.

When the parties met on May 17th for the condition inspection, the tenants disagreed with the landlord's report and wouldn't sign it. The tenant MC provided the tenants' forwarding address on the report before they left. The landlord testified he was unable find new tenants for the remainder of the month of May.

Analysis

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has provided compelling evidence to show the tenants ended the tenancy on May 17, 2019; did not pay rent for that month; and did not have a right to deduct all or a portion of the rent contrary to section 26. Section 67 indicates that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I am satisfied the tenants were obligated to pay rent in the amount of \$1,947.50 to the landlord for the month of May and failed to do so. In accordance with section 67, I award the landlord monetary compensation in the amount of \$1,947.50.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenants' security deposit in the amount of \$900.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
May 2019 rent	\$1,947.50
Filing fee	\$100.00
Less security deposit	(\$900.00)
Total	\$1,147.50

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,147.50.

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: July 09, 2019

Residential Tenancy Branch