



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL OPC

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants were represented by MC in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenants' representative confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Both parties confirmed in the hearing that the tenancy has ended, and that the landlord no longer requires an Order of Possession. Accordingly, the landlord's application for an Order of Possession was cancelled.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed-term tenancy began on September 1, 2018, and was to end on August 31, 2019. Monthly rent was set at \$1,650.00 plus \$120.00 for utilities, payable on the first of every month. The landlord had collected a security deposit in the amount of \$825.00,

which he still holds. The tenants' representative testified that the tenants had moved out by the end of July 2019. The landlord testified that he had received a text message from the tenant on August 1, 2019 that they had moved out.

The landlord is seeking a monetary order for unpaid rent for the months of June and July 2019 as the tenants failed to pay any rent or utilities for these months. The tenants' representative testified that the tenants do not dispute that they had withheld the rent for June and July 2019 as they felt that the landlord had failed in his obligations to comply with the *Act* and tenancy agreement.

Analysis

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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.*

I find that the tenants were obligated to pay the rent as per the tenancy agreement and the *Act*. I find the landlord provided undisputed evidence to support that the tenants have failed to pay rent for the months of June and July 2019 as required by section 26 of the *Act*. The tenants did not provide any supporting evidence to demonstrate that they had an order from an Arbitrator allowing them to deduct all or a portion of the rent, nor do I find that the tenants had a right under the *Act* to deduct or withhold all or portion of the rent. Accordingly, I allow the landlord's monetary claim for unpaid rent and utilities for June and July 2019.

The landlord continues to hold the tenant's security deposit of \$825.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord's application for an Order of Possession was cancelled.

I allow the landlord's monetary claim for unpaid rent and utilities for June and July 2019, as well as recover the \$100.00 filing fee from the tenants. I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I issue a Monetary Order in the amount of \$2,815.00 in the landlord's favour. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: August 19, 2019

Residential Tenancy Branch