



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALSTAR MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

On May 27, 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*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.H. attended the hearing as an agent for the Landlord. Both Tenants attended the hearing as well. All parties in attendance provided a solemn affirmation.

S.H. advised that she served the Tenants only one Notice of Hearing and evidence package by registered mail on May 28, 2019. Tenant Z.J. confirmed that he received it and informed Tenant C.C. of this hearing. Tenant C.C. also advised that he was aware of the case against him. While each Respondent was not served individually as per Rule 3.1 of the Rules of Procedure, as each Respondent confirmed that they were aware of the case against them, based on this solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence package.

The Tenants advised that they did not submit any evidence for consideration on this file.

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 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.

All parties agreed that the tenancy started on August 1, 2018 for a fixed length of time of one year, ending on July 31, 2019. However, this tenancy ended on May 23, 2019 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,820.00 per month, due on the first day of each month. A security deposit of \$885.00 was also paid. The Landlord submitted a copy of a signed tenancy agreement as documentary evidence.

The Tenants advised that they only realized before the hearing that the copy of the tenancy agreement they had in their possession was different from the copy submitted by the Landlord. They stated that the basic details of the tenancy are the same on their copy; however, they have multiple initials on their copy that do not appear on the Landlord's copy. Their position is that the Landlord's evidence is fraudulent.

S.H. advised that the Tenants signed the tenancy agreement with the original landlord; however, her property management company took over the rental unit on August 31, 2018 and the tenancy agreement submitted was the only tenancy agreement that she was provided with.

She advised that she is seeking compensation in the amount of **\$1,820.00** because the Tenants did not pay May 2019 rent and were subsequently given a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). She stated that she was also seeking compensation in the amount of **\$25.00** for late payment of ren. However, as she stated that this term was not stipulated in the tenancy agreement, this claim was dismissed.

The Tenants acknowledged that, despite wanting to, they could not and did not pay May 2019 rent due to unforeseen health and other circumstances. They also acknowledge receiving the Notice and that they vacated the rental unit as per the Notice. They advised that it is their position that upon signing the original tenancy agreement, they spoke with an employee of that company that advised them that any notice to end their tenancy would relieve them of any obligations under the tenancy agreement. As such, they believed that they are not responsible for the entirety of May 2019 rent, but only up until the date they gave up vacant possession of the rental unit.

Analysis

Upon consideration of the testimony 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.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent, while the Tenants believe that there is some sort of fraud with respect to the tenancy agreement submitted as documentary evidence, the undisputed evidence is that the Tenants signed a fixed term tenancy agreement starting on August 1, 2018 and ending on July 31, 2019. As I am satisfied that they agree that they signed a tenancy agreement consenting to the terms of this tenancy, I am satisfied that the Tenants were bound by these terms. I make no finding on their claim of a fraudulent tenancy agreement as I do not find that it bears any relevance to the Landlord's claim of unpaid rent.

While the Tenants claim that they were advised that any notice to end their tenancy would relieve them of any responsibilities and obligations under the *Act*, I find it important to note that Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit. However, there are no provisions in the *Act* that state that the Tenants are freed from being responsible for any rental loss that the Landlord incurs in this instance.

The undisputed evidence before me is that the Tenants did not pay rent in full when it was due. As they had no valid reason for withholding the rent pursuant to the *Act*, I am satisfied that the Landlord suffered a rental loss from the Tenants' actions. As such, I am satisfied that the Tenants are still responsible for the entirety of May 2019 rent that was lost. Consequently, I grant the Landlord a monetary award in the amount of **\$1,820.00** to satisfy the Landlord's loss for rent owing for the month of May 2019.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

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

May 2019 rental loss	\$1,820.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,920.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,920.00** 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: September 1, 2019

Residential Tenancy Branch