



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-tenant RP (the "tenant") spoke on behalf of the two co-tenants.

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This fixed term tenancy began in August 2018 and scheduled to end on July 31, 2019. The monthly rent was \$1,100.00 payable on the first of each month. A security deposit of \$550.00 was collected at the start of the tenancy. The landlord currently holds \$300.00 of the deposit having returned \$250.00 to the tenants.

The tenants vacated the rental unit on April 30, 2019 without providing the landlord notice. The landlord had earlier issued a 1 Month Notice to End Tenancy for Cause dated April 21, 2019. The tenants did not pay any rent for May, 2019.

The tenants submit that the rental unit had a number of deficiencies including mould that gave them the right to end the tenancy without providing notice and to withhold rent for May 2019.

Analysis

Pursuant to 26(1) of the *Act*, 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.

Section 45(2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice effective on a date no earlier than the date specified in the tenancy agreement and no earlier than one month after the date the notice is received.

In the present case the tenants provided no notice to the landlord and vacated the rental unit on April 30, 2019. As such I find that the tenants were obligated to pay the full rent owing on May 1, 2019 and failed to do so.

I do not find the issuance of the 1 Month Notice gave rise to the right of the tenant to end the tenancy earlier than the date specified on the notice or decline to pay the monthly rent. The issuance of the 1 Month Notice did not affect the tenants' obligation to pay the rent for May 1, 2019 when due.

The tenants submit that they were not obligated to pay rent under the tenancy agreement due to the condition of the suite, various inconveniences they suffered and their experiences in this tenancy. I find the tenants' submissions to be wholly irrelevant, and not at all persuasive as to the issue of payment of rent.

I accept the evidence that monthly rent for this tenancy was \$1,100.00. I find that the tenants were obligated to pay the full rent on May 1, 2019. I accept the evidence that the tenants failed to do so. As such, I find that the landlord is entitled to a monetary award in the amount of \$1,100.00 as against the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$300.00 portion of the tenants' security deposit currently being held in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful the landlord may recover their filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$900.00, allowing the landlord to recover the unpaid rent and filing fee and retain a portion of the security deposit for this tenancy. 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 13, 2019

Residential Tenancy Branch