



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant’s Agent states that following the original hearing the Tenants did not receive a copy of the Landlord’s evidence and application package by email as agreed by the Landlord at the original hearing. Tenant DM states that they were also unable to access their storage after the original hearing to obtain these documents as Tenant DM only was able to obtain a copy of its birth certificate and that the storage company would not allow access without photo identification. Tenant DM states that it applied for new identification in August 2019. Tenant DM states that it only recently obtained the photo identification. Tenant DM states that Tenant ES only recently applied for its id. The Agent asks for an adjournment as they do not know the dates in which the Landlord is claiming rental arrears.

The Landlord states that the application and evidence was sent to the Tenants at the email address provided by the Tenants at the original hearing. The Landlord states that if the Tenants did not receive the email the Tenants could have contacted the Landlord to send another email. The Landlord states that the Tenants have both the Landlord's email address and phone contact number. The Landlord does not consent to the adjournment.

Rule 7.9 of the RTB Rules of Procedure provides that in considering whether the circumstance warrant an adjournment, consideration will be made on the degree to which the need for the adjournment arises out of the neglect of the party seeking the adjournment. There is no dispute that the Tenants did receive the Landlord's application and evidence package in advance of the original hearing. This is noted in the Interim Decision dated August 12, 2019. The adjournment at the original hearing was granted as the Tenants placed the documents in storage and could not be retrieved due to lack of identification. Given the Tenants' evidence that one Tenant did obtain photo identification prior to this reconvened hearing, that the other Tenant only applied for its identification recently, and the Landlord's undisputed evidence that the Tenants did not contact the Landlord about not getting the emailed documents after the original hearing, I consider that the Tenants failed to carry out reasonable actions to retrieve the Landlord's evidence. For these reasons and as the Landlord objected to another adjournment, I find that in the circumstances an adjournment is not warranted.

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on May 1, 2015. Rent of \$1,400.00 was payable on the first day of each month.

The Landlord states that \$700.00 was collected as a security deposit. The Tenants state that they think they paid \$1,400.00 as a security deposit. The Tenant states that it read that they paid \$1,400.00 as a security deposit on one of the documents that they received with the Interim Decision.

The Landlord states that although it was granted an order of possession on March 13, 2019 through the direct request proceedings, the Residential Tenancy Branch (the "RTB") did not provide a copy of that order. The Landlord states that it waited until April 2019 to receive the order. The Landlord also states that it received the order of possession from the RTB on May 7, 2019 following a hearing on May 3, 2019. The Landlord provides a file number for those proceedings and states that no rent was applied for on those proceedings however it is noted that the file number provided at the reconvened hearing is the current file number. The Landlord states that the order was served on the Tenants on May 7, 2019 and on May 9, 2019 the Landlord had a bailiff remove the Tenants.

The Landlord states that between October 2016 and April 2019, inclusive, the Tenants failed to pay rent of the accumulated amount of \$4,085.00. The Landlord provides a ledger of payments made for that period. The Landlord claims \$4,085.00. The Landlord states that no rent was paid for May 2019 and the Landlord claims \$1,400.00.

Tenant ES states that it has no knowledge of rent payments only that it consistently paid its share of the rent. Tenant DM states that rent payments were behind a few times and that it did periodically pay more rent. Tenant DM states that it does not recall what rents were paid for March, April and May 2019. Tenant ES states that both Tenants took turn being inconsistent with the payment of their share of the rent. Tenant ES states that perhaps \$100.00 was paid for May 2019, is not sure about April and March 2019 rent. Tenant ES also states that it must have paid rent for March 2019 as it wanted the tenancy to work out. Tenant DM states that in the last year of the tenancy the Tenants went without heat and floors. Tenant DM states that this is what caused the rent payments to be in dispute. The Tenants state that they did have access to their bank records but did not provide any for this dispute.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Given the Tenants' vague and unsupported evidence of rent payments and the Landlord's ledger evidence I find on a balance of probabilities that the rents paid by the Tenants were as set out on the Landlord's ledger. There is no evidence that the Landlord did not receive a copy of the previous decision dated March 13, 2019 that granted the order of possession. I consider therefore that the Landlord was aware on March 13, 2019 that it was entitled to the order of possession. The Landlord gives confusing and apparently inaccurate evidence of a hearing on May 3, 2019 wherein it obtained the order of possession on May 7, 2019. No record can be found of this hearing. The Landlord also gives inconsistent evidence that the order of possession was obtained in April 2019. As there is no other evidence that the Landlord took steps after receiving the Decision dated March 13, 2019 to obtain a copy of this order of possession from the RTB until May 7, 2019 or that the Landlord did receive the order of possession in April 2019 but did not act on that until May 7, 2019, I find on a balance of probabilities that the Landlord has not provided sufficient evidence of taking reasonable steps to obtain and serve the order of possession granted March 13, 2019 and therefore failed to act to mitigate ongoing rental losses. I therefore dismiss the claim for unpaid rent for March, April and May 2019. Accepting the Landlord's evidence that the total rent payable for the period October 2016 to April 2019 inclusive was \$23,200.00 as set out in the Landlord's ledger, I reduce this amount by \$2,800.00 representing March and

April 2019 rental amounts, leaving \$20,400.00 as the amount payable for this period. Accepting the Landlord's evidence that the total rent paid for the period October 2016 to April 2019 inclusive was \$19,115.00, I find that the Landlord has substantiated that the Tenants therefore failed to pay rental arrears of \$1,285.00.

As there is no evidence to support that the Tenants paid more than the \$700.00 indicated on the signed tenancy agreement for the security deposit and considering that the Tenants' oral evidence of such payment was uncertain, I find on a balance of probabilities that the Tenants only paid the allowable security deposit of \$700.00. Deducting the security deposit of **\$700.00** plus zero interest from the Landlord's entitlement of **\$1,285.00** leaves **\$585.00** owed to the Landlord. As the Landlord's application has had merit, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$685.00**.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$685.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: October 10, 2019

Residential Tenancy Branch