



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL & FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. A Monetary Order in the sum of \$3600 for non-payment of rent.
- b. An Order to retain the security deposit.
- c. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was personally served on the Tenant on August 10, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on October 14, 2018. The rent is \$1200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy.

DEB passed away as a result of a motor vehicle accident on Sunday, May 5, 2019. The representative of the Estate is the deceased's mother.

The tenancy ended on July 9, 2019 after a 10 day Notice to End Tenancy was served on the Tenant at the end of June. The keys were not returned until July 14, 2019. Many of the tenant's belongings were not retrieved by the Tenant until the end of July. The rental unit was re-rented with a new tenant taking possession on August 1 2019.

The representative of the Estate testified the tenant failed to pay the rent for the months of May 2019, June 2019 and July 2019 and the sum of \$3600 remains outstanding. The tenant accepted responsibility for the failure to pay the rent for June 2019 and July 2019. .

The Tenant testified he paid the rent for May 2019 in cash to the deceased on May 4, 2019 at the request of the deceased. The representative of the Estate testified there is no record of this payment including no receipts and no record the money was deposited into the deceased's bank account. The tenant testified the rent was usually paid by bank transfer. However, this was the third time he paid by cash at the request of the deceased. The deceased never not issued receipts for any of the rent payments. .

Analysis - Monetary Order and Cost of Filing fee

I determined the landlord is entitled to a monetary order for non-payment of the rent for June 2019 and July 2019 and the sum of \$2400 is outstanding.

I determined the landlord failed to prove the rent for May was unpaid for the following reasons:

- The Applicant has the burden of proof to present sufficient evidence to establish each of their claims on a balance of probabilities.
- The tenant testified he paid the May rent in cash on the Saturday the day before the deceased passed away. The representative of the landlord does not have any first hand knowledge to confirm or deny this testimony. It is not surprising that there may not be any records of a bank deposit given that this was a weekend.
- The landlord is operating a business and one would expect that the landlord would have a record of payments as well as receipts for the payments. The landlord did not give receipts. The representative of the landlord was not able to locate any record of an accounting of the rent payments.

In summary I determined the landlord failed to prove the rent for May 2019 was not paid and accordingly this claim is dismissed.

Monetary Order:

In summary I ordered that the tenant pay to the landlord the sum of \$2400 plus \$100 for the cost of the filing fee for a total of \$2500.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: November 19, 2019

Residential Tenancy Branch