



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPR

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord GB (the "landlord") primarily spoke on behalf of the applicants.

The landlord testified that they had personally served the tenant DCM with the application and evidence on October 18, 2019. Based on the testimony I find that the tenant DCM was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served the tenant JT with the application and evidence by registered mail, sent to an address provided by the tenant, on October 18, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant JT is deemed served with the landlord's materials on October 23, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord made an application to amend their claim to add the landlord GB as one of the applicants. In accordance with section 64(3)(c) of the Act, I amend the landlord's application to add the landlord GB as one of the applicants.

The landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed they have mitigated some of their losses and the amount they are presently seeking for losses is less than on the initial application. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to decrease the landlords' monetary claim from \$5,010.00 to \$2,505.00 as reducing the amount of damages could be reasonably anticipated.

The landlord testified that the tenants have vacated the rental unit and withdrew the portion of their application seeking an order of possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

This periodic tenancy began in 2014. Monthly rent at the end of the tenancy was \$2,505.00 payable on the first of each month. A security deposit of \$1,175.00 was collected at the start of the tenancy and is still held by the landlords.

The landlord testified that the tenants failed to pay rent for October 2019. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated October 7, 2019, indicating an arrear at that time of \$2,505.00. The landlord said that the tenants failed to pay the rental arrear and subsequently abandoned the rental suite sometime during October 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,505.00. I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$2,505.00. Therefore, I issue a monetary award in the landlords' favour for unpaid rent of \$2,505.00 as at November 19, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the security deposit currently being held of \$1,175.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,430.00 which allows the landlords to recover the unpaid rent and their filing fee and retain 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: November 19, 2019

Residential Tenancy Branch