



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S

Introduction

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

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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

As both parties were in attendance service was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The tenant said they had not submitted any materials. Based on the testimony I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord said that they wished to lower the monetary claim to \$2,200.00 as they had mitigated their losses. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it is reasonably foreseeable that a monetary claim would be reduced if the amount of damages are

found to be less, I amend the landlord's Application to decrease the landlord's monetary claim from \$19,800.00 to \$2,200.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary order as claimed?

Are the landlords entitled to retain all or a portion of the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee of this application from the tenants?

Background and Evidence

This fixed-term tenancy began in April 2019. The monthly rent was \$2,200.00 payable by the first of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants gave notice to the landlord of their intention to end the tenancy on July 21, 2019 by text message and vacated the rental unit by July 31, 2019. The tenants did not pay rent for August 2019.

The landlord said that they were able to find a new occupant for the rental unit for September 1, 2019. The landlord said they were unable to find an occupant for August 2019 due to the short notice provided by the tenants and seeks the equivalent of one month's rent, \$2,200.00.

The tenants confirm that they gave notice on July 21, 2019 and did not pay rent for the month of August 2019. The tenants gave some testimony about the circumstances that led to their breaching the tenancy agreement.

Analysis

A tenant must pay rent when it is due, pursuant to section 26(1) of the *Act*. Section 45 (2) of the *Act* explains that a tenant may end a fixed term tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on July 21, 2019 the effective date of the end of tenancy was August 31, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of \$2,200.00 on August 1,

2019. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants who failed to pay the full rent owing on August 1, 2019. Therefore, the landlord is entitled to a monetary award in the amount of \$2,200.00, the equivalent of one month's rent.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,100.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful the landlord is entitled to recover the \$100.00 filing fee for this application from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,200.00, which allows the landlord to recover the unpaid rent and 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 28, 2019

Residential Tenancy Branch