



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order of \$5,800.00 for rent and/or utilities for the Landlord, retaining the security deposit to apply to this claim; and to recover the cost of his \$100.00 Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on September 30, 2019. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in his Application documents and

confirmed the addresses at the outset of the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord submitted a water bill from the regional district for the rental unit in the amount of \$796.02, which is addressed to the Tenant, J.R. The water bill sets out the amount billed for the period from January 12, 2019 through to November 1, 2019, plus a late payment charge of \$7.27, for which the Tenants were responsible, according to the tenancy agreement. The tenancy agreement states that water is not included in the rent.

The Landlord did not serve this document on the Tenants, because he did not have their forwarding address when he received the bill. However, given that one of the Tenant's names is on the water bill with the rental unit address, I find it more likely than not that the Tenants knew they were responsible for paying the water bill, but failed to do so throughout the tenancy. I find it reasonable that the Tenants would have expected the Landlord to claim this amount from them through RTB dispute resolution.

The Landlord requested that the Application be amended to include this amount in the monetary claim for unpaid rent and utilities. Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the Tenants' ongoing failure to pay the water bill owing. I find no prejudice to the Tenants, as they were aware of the amount of the water bill, as it accumulated during the tenancy, and that they had not paid it; therefore, I find that the Tenants could have anticipated that the Landlord would claim reimbursement for the full amount of the unpaid water bill. Accordingly, I amend the Landlord's monetary claim from the Tenants for unpaid rent and utilities from \$5,800.00 to \$6,596.02.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states and the Landlord confirmed in the hearing that the periodic tenancy began on December 1, 2018, with a monthly rent of \$2,200.00, due on the first day of each month. The Landlord confirmed that the Tenants paid him a security deposit of \$1,100.00, and no pet damage deposit.

The Landlord said that he received an Order of Possession following another RTB hearing and that the Tenants were required to vacate the rental unit at the end of September 2019; however, he said he agreed that they could stay until mid-October 2019, if they agreed that he could keep the security deposit in lieu of rent for the first two weeks of October. As such, the Landlord no longer holds the security deposit.

The Landlord's undisputed evidence is that the Tenants own him the following in unpaid rent:

July 2019	\$1,400.00
Aug 2019	\$2,200.00
Sept 2019	<u>\$2,200.00</u>
TOTAL	<u>\$5,800.00</u>

The Landlord submitted a statement signed by both Tenants, in which they agree that they owe the Landlord this amount of unpaid rent. This statement says:

Sept 30, 2019

To whom it may concern:

I/We, [J.S.] and [J.R.] agree with our landlord, [B.H.], that as of September 30, 2019, we own him \$5800.00 in unpaid rents for renting [rental unit address]. This is the accumulation of unpaid rents of \$1400.00 for July, 2019, plus \$2200.00 for August, 2019, and \$2200.00 for September, 2019.

Sincerely,

[J.S.]

[J.R.]

 [signature]

 signature

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to

deduct any portion of the rent from the monthly rent due to the Landlord. I, therefore, find that pursuant to section 26 of the Act, the Tenants owe the Landlord \$5,800.00 in unpaid rent. I grant the Landlord a monetary award of **\$5,800.00** in recovery of the unpaid rent outstanding from this tenancy.

Pursuant to the Application Amendment authorized above, I also award the Landlord with \$796.02 from the Tenants for the unpaid water bill they incurred during the tenancy. Given the Landlord's success in this Application, I also award him recovery of the \$100.00 Application filing fee for a total Monetary Order of **\$6,696.02**.

Conclusion

The Landlord is successful in his Application for monetary compensation from the Tenants. I found that the Tenants failed to pay their full rent owing for July, August, and September 2019, in the amount of \$5,800.00, contrary to section 26 of the Act.

I also award the Landlord with recovery of the cost of the water bill of \$796.02 that was billed to the rental unit during the tenancy; the Tenants were responsible for paying this bill according to the tenancy agreement. The Landlord is also awarded recovery of his \$100.00 Application filing fee for a total Monetary Order of **\$6,696.02**.

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: January 27, 2020

Residential Tenancy Branch