



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord MG" did not attend this hearing, which lasted approximately 23 minutes. Landlord GG ("landlord") and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent landlord MG at this hearing (collectively "landlords").

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence by email. The tenants did not identify any prejudice as a result of receiving the landlords' evidence by email. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and notice of hearing. In accordance with section 71(2)(c) of the *Act*, I find that the tenants were sufficiently served with the landlords' evidence by email. I find that the tenants received and reviewed the landlords' evidence and did not suffer any prejudice as a result of receiving the evidence by email.

Both parties confirmed that they had no objections and they were ready to proceed with the hearing.

At the outset of the hearing, the landlord confirmed that the landlords did not require an order of possession because the tenants had vacated the rental unit. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

During the hearing, the landlord confirmed that the tenants vacated the rental unit on March 24, 2020 and he just completed some repairs on the week before this hearing, which he claimed were \$5,000.00. He stated that he had not yet provided the invoices and receipts for the repairs. Accordingly, this portion of the landlords' application is dismissed with leave to reapply, as the application was made prematurely before the tenants vacated the rental unit.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee paid for this application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on April 15, 2019 and ended on March 24, 2020. Monthly rent in the amount of \$2,400.00 was payable each month. No written tenancy agreement was signed between the parties, as this was a sublease through the former tenants, and the tenancy was continued by the landlords after the former tenants vacated the rental unit.

The landlord said that a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid to the former tenants, and he agrees that the landlords retain both deposits. The tenant claimed that the tenants paid a security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 and the landlords continue to retain both deposits.

The landlords seek a monetary order of \$8,000.00 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenants failed to pay rent of \$800.00 for December 2019, \$2,400.00 for January 2020, \$2,400.00 for February 2020, and \$2,400.00 for March 2020. The tenant said that rent of \$800.00 was paid for December 2019 but agreed that rent of \$2,400.00 for each month from January to March 2020 was not paid to the landlords.

Analysis

As per section 26 of the *Act*, the tenants are required to pay rent each month, as per the parties' tenancy agreement. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply.

I find that the landlords and tenants established a verbal tenancy agreement that was continued by the landlords when the former tenants, who sublet the rental unit to the tenants, vacated the rental unit. Therefore, I find, and the tenants agreed, that rent of \$2,400.00 was due from the tenants to the landlords, each month.

Both parties agreed that the tenants failed to pay rent of \$2,400.00 for each month from January to March 2020, totalling \$7,200.00. Therefore, I find that the landlords are entitled to \$7,200.00 in rental arrears from the tenants.

I accept the landlord's testimony that the tenants failed to pay rent of \$800.00 for December 2019. I find that the tenants did not provide documentary evidence, in the form of receipts, bank statements, or other such documents, to show that they paid this rent to the landlords. I find that the landlords cannot provide proof of the absence of rent being paid by the tenants.

I find that the landlords hold the tenants' security deposit of \$1,100.00 and pet damage deposit of \$1,100.00, totalling \$2,200.00. I accept the landlord's testimony that these deposits were paid by the tenants and are held by the landlords. I find that the tenants failed to show that they paid \$1,350.00 for each deposit, as they did not supply receipts or bank statements, to prove same. Further, the amount of \$1,350.00 is more than half a month's rent for each deposit, contrary to section 19 of the *Act*.

The landlords continue to hold the tenants' security and pet damage deposits totalling \$2,200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' entire security and pet damage deposits, totalling \$2,200.00, in partial satisfaction of the monetary award. No interest is payable on the deposits over the period of this tenancy.

As the landlords were partially successful in this application, I find that they are entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

I order the landlords to retain the tenants' entire security and pet damage deposits totalling \$2,200.00.

I issue a monetary order in the landlords' favour in the amount of \$5,900.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlords' application for a monetary order for damage to the rental unit is dismissed with leave to reapply.

The landlords' application for an order of possession is dismissed without leave to reapply.

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: April 02, 2020

Residential Tenancy Branch