



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On March 16, 2020, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 24, 2020, this Application was set down for a participatory hearing to be heard on May 12, 2020 at 11:00 AM.

On April 22, 2020, the Landlords amended their Application to increase the amount of monetary compensation they were seeking. As well, they included a request for an early end to the tenancy pursuant to Section 56 of the *Act*. They were informed that an early end of tenancy could not be considered by way of an Amendment and this request must be made as a separate Application. As such, this request was severed from the current Application.

Both Landlords attended the hearing; however, the Tenants did not attend the 23-minute teleconference hearing. All in attendance provided a solemn affirmation.

The Landlords advised that they served each Tenant with a Notice of Hearing package by registered mail on March 27, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing packages.

The Landlords also advised that they served the Tenants their evidence and the

Amendment by posting it to the Tenants' door on April 24, 2020 and they provided a proof of service form corroborating this service. As service of these documents complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and the Amendment and will consider them when rendering this Decision.

The Landlords stated that they were granted an Order of Possession of the rental unit in a previous hearing (the relevant file number is listed on the first page of this Decision) and that the Tenants gave up vacant possession of the rental unit on May 11, 2020. As a result, the request for an Order of Possession will not be considered as it would be unnecessary to do so.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to apply the security deposit towards the unpaid rent?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords advised that the tenancy started on December 12, 2019 and that rent was established at \$1,175.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

They stated that the Tenants did not pay rent in the amount of **\$1,175.00** for February 2020 rent or **\$1,175.00** March 2020 rent. Furthermore, they stated that they reduced rent for April to **\$1,075.00**, but the Tenants did not pay this either. As well, while they served the Order of Possession to the Tenants on April 13, 2020 and received many messages from the Tenants that they would be vacating, the Tenants did not give up

vacant possession of the rental unit until May 11, 2020. While the Landlords were not sure how much compensation they were seeking for May 2020, they requested **\$1,075.00**. They advised that their tenancy agreement stipulated that the tenancy would end on April 30, 2020 because a family member would be moving in. However, this was not possible because the Tenants overhauled the rental unit, the rental unit needed to be aired out due to COVID-19, the Tenants changed the locks without authorization, and they did substantial damage to the rental unit. They also stated that the Tenants gave written authorization on March 31, 2020 for the Landlords to keep their security deposit. The Landlords submitted documentary evidence to support their claims for rental loss.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlords' claims for February, March, and April 2020 rent, I am satisfied from the undisputed evidence that the Tenants did not pay this. As such, I grant the Landlords a monetary award in the amount of **\$3,425.00** for the rental arrears for these months.

With respect to May 2020 rent, as it was the Landlords' intention to have a family member reside in the rental unit after April 30, 2020 and they were not going to rent out this space, I can reasonably infer that they were not anticipating rent for May 2020. However, as the Tenants overhauled the rental unit, I am satisfied that the Landlords should be compensated in the pro-rated number of days that the Tenants occupied the rental unit unnecessarily. This amount of arrears is calculated as follows: $\$1,075.00 \times 12 \text{ months} / 365 \text{ days} \times 11 \text{ days} = \mathbf{\$388.77}$.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Furthermore, as the Landlords were given written authorization to keep the security deposit to apply towards these debts, this will be reflected in the table below.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

February 2020 rent	\$1,175.00
March 2020 rent	\$1,175.00
April 2020 rent	\$1,075.00
Pro-rated May 2020 rent	\$388.77
Recovery of filing fee	\$100.00
Security deposit	-\$550.00
TOTAL MONETARY AWARD	\$3,363.77

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$3,363.77** in the above terms, and 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: May 12, 2020

Residential Tenancy Branch