



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on June 5, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities.

The Landlord provided testimony at the hearing. The Tenant did not attend the hearing.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

This package was sent on April 30, 2020, by email, to each of the Tenants at their individual email addresses. The Tenants did not respond to the email but the Landlord has routinely used the email addresses to communicate with the Tenants leading up to this point. As such, I turn to point number 3 above to determine whether or not the documents were sufficiently served.

I note the Landlord also followed up by text message to the Tenants to confirm they received the documentation. I find the Tenants are deemed to have received the hearing package, and evidence on May 3, 2020, 3 days after the email was sent.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence, which shows that monthly rent is \$1,450.00, and is due on the 10th day of the month. The Landlord testified that the Tenants never paid a security or pet deposit.

The Landlord stated that he signed the tenancy agreement with the Tenants on February 25, 2020, and the Tenants promised to pay the deposit within a month, which they never did. The Tenancy Agreement states that the tenancy was supposed to start on April 10, 2020, but the Tenants changed their mind at some point. The Landlord stated that the Tenants ignored him for the most part, and never ended up moving into the rental unit. The Landlord followed up with the Tenants just before they were set to move in, and the Tenants said they didn't want the unit any longer. The Landlord stated that the unit sat empty for that month as a result, and he is seeking to recover rent for April. The Landlord stated that the Tenants paid him \$300.00 in rent on May 8, 2020, as this was all they could afford, but they still owe him \$1,150.00 for April.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit

In order to enter into a contract, mutual declarations of intent must be exchanged. In this case, the Landlord agreed to rent the premises to the Tenants for a price. The Tenants agreed to pay this price (signed the agreement), along with a security deposit, by a certain date. In most cases, a contract is considered to have been "entered into" once the material terms of the contract have been agreed upon (an offer, and its acceptance). I note that the Tenants had yet to pay the security deposit. However, I find the parties rights and obligations under the tenancy agreement began at the time they both signed the agreement (offer and acceptance). On the most recent agreement, this date was February 25, 2020.

I find there was a valid tenancy agreement, despite no deposit being paid. It appears the Tenants changed their mind and did not move in or pay the deposit. The Tenants did not properly give notice, and breached their obligations under the tenancy agreement and the Act.

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit

overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find the tenancy was set to start on April 10, 2020, with \$1,450.00 due on that date, for the period of April 10-30. The Tenants did not fulfill the terms they agreed to, and I find they are responsible for April rent, in the amount of \$1,450.00, less the amount they paid (\$300.00). There is no evidence they even had any legal basis to terminate the agreement they signed, end the tenancy, or back out of the agreement they signed in February 2020. The Tenants still owe \$1,150.00 in rent for April 2020. As such, a monetary order will be issued to reflect this amount.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,150.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: June 05, 2020

Residential Tenancy Branch