



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XVIII LP c/o Metcap Living
Managment and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 67 of the *Act*;
- an authorization to retain the tenants' security deposit under section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:40 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the notice of hearing and evidence (the Materials) by registered mail on June 16, 2020 in accordance with section 89(1)(d) of the *Act* (the tracking numbers of both packages are recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenants are deemed to have received the Materials on June 21, 2020

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Issues to be Decided

Is the landlord entitled to:

1. retain the tenant's security deposit?
2. receive a monetary award for compensation for unpaid rent?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate their application.

The landlord testified the tenancy started on May 01, 2019 and ended on June 01, 2019. Monthly rent was \$1,275.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$637.50 was collected and the landlord still holds it in trust.

The tenancy agreement was submitted into evidence. It indicates:

The tenancy created by this Agreement starts on May 01, 2019 and is for a fixed term ending on April 30, 2020. At the of this time the tenancy will continua on a month to month basis, unless the tenant gives notice to end the tenancy as outlined in section 33 of this Agreement.

[...]

Section 33: The tenant may end the tenancy by giving the landlord at least one whole calendar month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

Section 33 of the tenancy agreement has a specific signature of the tenants.

The tenants served a notice to end monthly tenancy on May 20, 2020 and provided their forwarding address on that date (a copy of the notice was submitted into evidence). The tenants were aware they had to serve a notice to end monthly tenancy at least one month before the end of the tenancy. The tenants did not pay rent on June 01, 2020.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. Pursuant to section 26(1) of the Act, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,275.00 on the first day of each month.

Section 45(1) of the Act states:

- (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice, and
 - (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the landlords' testimony and the tenancy agreement, I find the tenants had a periodic tenancy with the landlord, served a notice to end monthly rent on May 20, 2020, ended the tenancy on June 01, 2020 and did not pay rent in accordance with section 26(1) for the month of June 2020. As such, the tenants owe rent in the amount of \$1,275.00 for June 2020.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to section 38 of the Act and Residential Tenancy Branch Policy Guideline 17 I authorize the landlord to retain the \$637.50 security deposit to offset the monetary award for unpaid rent.

In summary:

Unpaid rent June 2020	\$1,275.00
Filing fee	\$100.00
Subtotal	\$1,375.00
Minus balance of the deposit	-\$637.50
Total monetary award	\$737.50

Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenants' security deposit of \$637.50 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of **\$737.50**.

The landlord is provided with this order 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: July 13, 2020

Residential Tenancy Branch