



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On March 12, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing. Tenants P.B. and A.N. attended the hearing as well, with A.B. attending as their advocate. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on March 26, 2020 and the Tenants acknowledged receiving these packages. Based on this undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages. As such, this evidence was accepted and will be considered when rendering this Decision.

A.N. advised that she served her evidence to the Landlord by registered mail on or around May 27, 2020 and P.B. advised that she served her evidence to the Landlord by regular mail on May 25, 2020. The Landlord confirmed that she received these packages. Based on this undisputed testimony, I am satisfied that the Landlord has been served the Tenants’ evidence packages. As such, this evidence was accepted and will be considered when rendering this Decision.

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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord 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.

All parties agreed that the tenancy started on June 1, 2019 and ended when the Tenants gave up vacant possession of the rental unit on February 29, 2020. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

A.N. advised that they provided the Landlord with their forwarding address in writing “a couple of times” by putting a letter in her mailbox. P.B. concurred that they did this “a few times” and that she was “pretty sure” it was done “at least twice.” She then stated that she was “assuming that this was done.” A.B. advised that the Tenants emailed their new address to the Landlord on February 14, 2020.

The Landlord confirmed that she received a letter in the mail, and she was also provided with their forwarding address on the move-out inspection report on February 29, 2020. She stated that she returned \$600.00 of the security deposit to the Tenants on March 16, 2020 and the Tenants confirmed that they received this amount from the Landlord.

The Landlord advised that she was seeking compensation in the amount of **\$150.00** for six late rent charges for June, July, September, and December 2019, and January and February 2020. She referenced the tenancy agreement which stipulated that there would be a \$25.00 charge for late payment of rent. She stated that the Tenants paid rent separately each month, in the amount of \$750.00 each, and that P.B. had texted her on June 3, 2019 to advise her that rent for that month would be late. She received \$1,500.00 on June 3, 2019.

She submitted that she received the balance of July 2019 rent on July 3, 2020 and as the Tenants paid rent separately, she is not sure who paid the rent late for this specific month. She stated that she received \$1,500.00 for September 2019 rent on September 3, 2019, \$1,500.00 for December 2019 rent on December 2, 2019, \$1,500.00 for January 2020 rent on January 2, 2020, and \$1,500.00 for February 2020 rent on February 3, 2020.

P.B. advised that they were not aware that their rent was late until they were served a One Month Notice to End Tenancy for Cause (the "Notice") for repeated late payment of rent, on January 6, 2020. Regarding the June 2019 late rent, she stated that she was on a federal program where the financial system prevented her from having her money deposited on time. She advised the Landlord of this via text and she "assumed" that the late rent for June 2019 would be "ok." She also "assumed that the money would be deposited on time", but she was not aware that it would be late. She submitted screenshots of electronic transfer text confirmation messages to demonstrate that rent was transferred on the first of each month. She acknowledged that June 2019 rent was late, but they had lots of correspondence with the Landlord, and the Landlord never brought up the late rent issue until the Notice was served.

A.N. referenced documentary evidence submitted to confirm that her electronic transfers for rent were delivered on time for December 2019 rent, and January and February 2020 rent. As well, a document from her bank indicated that electronic transfers are made in "real time." She also stated that she was surprised by the Notice that was served to them. She advised that they had many issues with the Landlord during the tenancy, so they accepted the Notice and found a new place to rent instead.

A.B. advised that the day after the Landlord refers to for late rent are all the first business day after a weekend or a statutory holiday. Thus, the alleged late payments are actually the day the bank processed these transfers.

The Landlord stated that the Tenants claimed to have been unaware of being late paying rent; however, when they received the Notice, they still chose to pay February 2020 rent late.

Analysis

Upon consideration of the testimony 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.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on February 29, 2020. As the tenancy ended on this date as well, I find that February 29, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on March 12, 2020 and returned the balance of their deposit on March 16, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's 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."

Furthermore, Section 7 of the *Residential Tenancy Regulations* states that a fee of not more than \$25.00 can be charged for late payment of rent as long as it is stated in the tenancy agreement.

When reviewing the totality of the evidence before me, there is no dispute that there is a term in the tenancy agreement permitting a late fee of \$25.00 for late payment of rent. Moreover, the consistent and undisputed evidence is that June 2019 rent was paid late. As such, I am satisfied that the late rent fee of \$25.00 would be owed for this month.

Regarding the other months of late rent that the Landlord is seeking compensation for, I note that the burden of proof is on the Landlord to support her allegations of these instances of repeated late payment of rent. From her, I have her testimony, a document from her financial institution indicating that February 2020 rent was received from the Tenants on February 3, 2020, and a copy of the Notice.

From the Tenants, I have their testimony, including electronic confirmation from P.B. of payments for July 2019 rent paid early, for September 2019 rent paid on September 1, 2019, for December 2019 rent paid on December 1, 2019, for January 2020 rent paid on January 1, 2020, and for February 2020 rent paid on February 1, 2020. I also have electronic confirmation from A.N. of payments for December 2019 rent paid on December 1, 2019, for January 2020 rent paid on January 1, 2020, and for February 2020 rent paid on February 1, 2020.

As the parties' electronic statements for February 2020 conflict, and as the burden is on the Landlord to establish this claim, I am not satisfied that the Landlord has submitted sufficient evidence to support the late fee for February 2020 rent.

Regarding December 2019 and January 2020 rent, I have evidence before me from the Tenants of electronic transfers on the first of each month for rent, but no supporting documentation from the Landlord to speak to late payments of rent for these months. As such, I find that there is insufficient evidence to grant a late fee for December 2019 or January 2020 rent.

Regarding July 2019 and September 2019 rent, I have evidence before me from only Tenant P.B. of electronic transfers for these months. As the Tenants paid rent separately and as there are no electronic statements from Tenant A.N. regarding these months, it is possible that she could have been responsible for these late payments. This would be consistent with some of the late payments that justified the service of the Notice by the Landlord. Based on a balance of probabilities, I find it more likely than not that rent for July and September 2019 was not paid in full on the first of each month. Consequently, I grant the Landlord a monetary award in the amount of \$50.00.

When reviewing the totality of the evidence before me, I am satisfied that the Landlord has only established a claim for three late payments, and I grant her a monetary award in the amount of **\$75.00** for June, July, and September 2019 rent.

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover **\$50.00** of the \$100.00 filing fee paid for this Application. Furthermore, as the Landlord has only claimed \$150.00 of the Tenants' security deposit and has returned the balance, I Order that the Landlord return to the Tenants an amount equivalent **\$25.00**. This is the difference of the amount of the deposit that she claimed against and what she was awarded.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$25.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 27, 2020

Residential Tenancy Branch