



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on July 3, 2020. The Landlords applied for an order of possession pursuant to section 55 of the *Act*, for a monetary order for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both Landlords attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlords testified that the documents were sent by registered mail on July 7, 2020, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

- Are the Landlords entitled to an order of possession?
- Are the Landlords entitled to a monetary order for rent?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

The Landlords testified that the tenancy began on January 1, 2017, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The Landlords testified that by the end of this tenancy rent, in the amount of \$1,750.00 was to be paid by the first day of each month, and that they were holding a \$850.00 security deposit for this tenancy.

The Landlords testified that the tenancy ended on August 1, 2020, when the Tenant vacated the rental unit.

The Landlords testified that the Tenant did not pay the full rent for June 2020, in the amount of \$250.00, and July 2020, in the amount of \$1,750.00. The Landlords are requesting a monetary order for the outstanding rent.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

I accept the Landlords' testimony that the Tenant vacated the rental unit on August 1, 2020, and that the Landlords have possession of the rental unit as of the date of this hearing. As the Landlords have possession of the rental unit, I find that an order of possession is not required, in this case.

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the Landlords' testimony that the rent has not been paid for June and July 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlords have established an entitlement to a monetary award of \$2,000.00, comprised of \$250.00 in rent for June 2020, and \$1,750.00 in rent for July 2020 rent. I grant permission to the Landlords to retain the security deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$1,250.00, consisting of \$2,000.00 in unpaid rent, \$100.00 in the recovery of the filing fee for this hearing, less the \$850.00 security deposit the Landlords are holding for this tenancy.

Conclusion

I find for the Landlord under sections 65 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$1,250.00**. The Landlords are provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: August 4, 2020

Residential Tenancy Branch