



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on July 17, 2020 seeking an order of possession of the rental unit. Additionally, the landlord seeks an order to recover money for unpaid rent, and the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 24, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent of the landlord (the “landlord”) ~~landlords~~ attended the telephone conference call hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that they served the document at a verified address allowed under section 89 of the *Act*, and I must accept that evidence.

In the hearing the ~~landlords~~ stated that they used Canada Post registered mail to send the Notice of Hearing to the tenant. They used the address of the rental unit where the tenant resided at the time the ~~landlords~~ made their Application. This package included the evidence the ~~landlords~~ presented in this hearing. They provided a Canada Post registered mail tracking number.

I accept the ~~landlords’~~ evidence that the package was sent to the tenant via registered mail. Based on these submissions, I accept they made a reasonable attempt to serve the tenant with notice of this hearing and their Application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

Preliminary Matter

The landlords in attendance stated that the tenant vacated the unit on July 28, 2020. Their verification of this is a property manager communicating this to them on August 3, 2020. The confirmed that the tenant has moved out, and there has been no communication between the landlords and tenant.

The tenant moved out of the unit after the landlords issued a Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The tenancy was ended when the tenant moved out, and for this reason, the landlord's request for an Order of Possession is dismissed.

Issue(s) to be Decided

~~Are~~ Is the landlords entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

~~Are~~ Is the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only that which are relevant to the issues and findings in this matter are described in this section.

The landlords ~~apply~~ applies for an order applying the security deposit to the monetary claim. They seek recovery of rent not paid for the months of April through to July 2020.

The landlords provided a copy of the tenancy agreement and spoke to the terms therein in the hearing. The two parties signed the agreement on July 8, 2015. The monthly rental amount was \$1,400.00, payable on the first of each month. A security deposit was paid on the date of the signing, for \$700.00. The tenancy started on September 1, 2015. During the tenancy, there was a rent increase, bringing the current rent amount to \$1,500.00.

The landlords itemized the unpaid rent amounts on the Application. The landlords applied for a monetary order for \$6,000.00 in unpaid rent. This is \$1,500.00 each for the months of April 2020 to July 2020.

Analysis

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords 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.

I find there was a pattern of non-payment of rent, starting from April 2020 onwards. The landlords stated that they made requests to the tenant to pay, but the tenant did not respond to these requests.

The landlords presented evidence in the form of captured images of cheques for the current rent amount of \$1,500.00. These images show "PAYMENT STOPPED" for each of the months of April, May, June and July 2020. In the hearing, the landlords stated that "PAYMENT STOPPED" means that the tenant gave instruction to the bank to stop these payments.

As presented, I find the amount of \$6,000.00 is accurate through July 2020. The tenant did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount.

I find the landlords is entitled to an award for the unpaid rent amount of \$6,000.00 ~~\$15,600.00~~.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlords. The landlords ~~have~~ has established a claim of \$6,000.00. After setting off the security deposit amount of \$700.00, there is a balance of \$5,300.00. I am authorizing the landlords to keep the security deposit amount and award the balance of \$5,300.00 as compensation for rent and utility amounts owing.

As the landlords ~~are~~ is successful, I find that ~~the landlords~~ they are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$5,400.00 for unpaid rent and a recovery of the filing fee for this hearing application.

The landlords ~~are~~ is 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 24, 2020

Residential Tenancy Branch

CORRECTED DATE: September 16, 2020