Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Producers Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   **MNRL-S, FFL**

Introduction
This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The landlord attended the hearing, represented by property manager, KG ("landlord"). The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. 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.

The landlord testified that she served each tenant with the Application for Dispute Resolution Proceedings Package by registered mail to their shared residential address on August 27, 2020. Tracking numbers for the mailings are provided on the cover page of this decision. I am satisfied the tenants were each served with the Application for Dispute Resolution Proceedings Package five days after mailing, on September 1, 2020 in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided
Is the landlord entitled to the monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence
The landlord gave the following undisputed testimony. The tenancy began on August 18, 2018 with rent set at $2,300.00 per month payable on the first day of the month. A security deposit of $1,150.00 was collected by the landlord which she continues to hold. Throughout the tenancy, the tenants were either late in paying rent or didn't pay any rent at all. The landlord provided a ledger of the rent from the beginning of the tenancy until August 1, 2020 into evidence. According to the ledger, the tenants are in arrears of rent for a total of $6,703.00, which includes four $50.00 fees for returned payment of cheques. The landlord also provided screen shots of text messages between herself and the tenants whereby the tenants acknowledge they are having difficulty in paying rent.

The landlord testified that she served the tenants with a Two Month's Notice to End Tenancy for Landlord's Use and the tenants have advised her they intend on moving out at the end of September in accordance with the notice. The landlord testified that the tenants did not pay rent for the month of September, however she acknowledges they are not required to pay rent for that month because they were served with a Two Month's Notice to End Tenancy for Landlord's Use.

Analysis
Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:
1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the Act states 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.

The landlord has provided undisputed testimony that the tenants did not pay rent or paid only a portion of the rent throughout the tenancy. The testimony is corroborated by the text messages from the tenants and the rent ledger which provides uncontroverted evidence that the tenants failed to pay the rent as recorded in the landlord's ledger, contravening section 26 of the Act. I am satisfied that the landlord is entitled to compensation for the unpaid rent in the amount of $6,503.00.

Rent for the month of September 2020 will not be recovered by the landlord in accordance with section 51 of the Act.

Included in the landlord's ledger are four $50.00 fees for returned payments. The landlord was unable to verify whether these fees were charged to the landlord by their financial institution. As such, I find these fees are not recoverable under section 7 of the Residential Tenancy Regulations and will not be recovered by the landlord.

As the landlord's application was successful, the landlord is also entitled to recovery of the $100.00 filing fee for the cost of this application.

The landlord continues to hold the tenants' security deposit of $1,150.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Arrears in rent	$6,503.00
Filing fee	$100.00
Less security deposit	($1,150.00)
Total	**$5,453.00**

Conclusion
I issue a monetary order in the landlord's favour in the amount of **$5,453.00.**

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: September 21, 2020

_____
Residential Tenancy Branch