



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution on May 1, 2020 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on September 4, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenants did not attend. The tenants provided documentary evidence prior to this hearing.

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to each of the tenants on May 10, 2020. They stated the tracking number entry for Canada Post showed the registered mail was delivered to each tenant. Their packages of registered mail included their prepared documentary evidence in this matter.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenants were sufficiently served with notice of this hearing, as well as the landlord’s evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

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

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

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms. The tenants signed the agreement on January 14, 2019 while the landlord signed it on January 25, 2019. The tenancy started on February 1, 2019 for a fixed term ending on February 1, 2020 and continued as a month-to-month tenancy after that. The monthly rent at the start of the tenancy was \$2,500.00 per month. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$500.00 on January 25, 2019.

The tenants gave their notice to end the tenancy on March 31, 2020. This email message stated: "Giving you 30 days notice. . ." The tenants and the landlord thereafter jointly signed a 'Mutual Agreement to End Tenancy' on March 31, 2020 for the tenancy end date on April 30, 2020.

The landlord presented that the tenants 'initially didn't pay for April' and they made the "demand" that the landlord keep the security deposit so they could move out by April 20. The landlord an email message dated March 31 showing this proposal by the tenants. The tenants moved out on April 15, 2020.

By the landlord's account, the tenants insisted they were going to stay so the landlord could not show the unit to other prospective renters. They messaged to him that they were sick, and this made both the move-out and showings of the unit to prospective renters difficult. In a reply, the landlord stated that they needed to have any agreement on the application of the security deposit to April's rent amount in writing.

The landlord attempted to schedule a move-out inspection meeting with the tenants. In the hearing, they stated the tenants "would not meet to do a condition inspection report."

The landlord claims the full amount of April rent, for \$2,500.00. They request to apply the full amount of deposits, for \$1,750.00. The tenants requested the landlord keep the deposits; however, they were "unwilling to sign [a] document stating so." By offsetting the security deposit amounts from the full amount of monthly rent, the landlord is claiming the remaining amount of \$750.00.

The tenants did not attend the hearing and did not provide documentary evidence prior to the hearing date.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the amount of the deposits paid. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the evidence before me that the tenants failed to pay the full amount of rent for April 2020. Their initial end-of-tenancy date they provided to the landlord was April 30, 2020, as stated in the Mutual Agreement to End Tenancy that both they and the landlord signed on March 31, 2020. I find the landlord is entitled to the whole of April's rent, \$2,500.00.

I accept the landlord's evidence that the tenants impeded efforts the landlord made at re-renting the unit in a timely fashion. The tone in the tenants' messages to the landlord is vaguely insistent. From this, I find the tenants did not commit to a firm date for their move-out.

The tenants had agreed for the landlord to keep the deposit. I find this was their intention for their time in the unit in April, which ended on April 15, 2020. While the landlord insisted on receiving their commitment to this agreement in writing, the tenants did not provide it.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$750.00. After setting off the security deposit amount of \$1,750.00, there is a balance of \$750.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$750.00 as compensation for rent owing.

As the landlord is successful, I find that the landlord is 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 landlord a Monetary Order in the amount of \$850.00. 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 *Act*.

Dated: September 9, 2020

Residential Tenancy Branch