



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord BW (the "landlord") primarily spoke on behalf of both named applicants.

The landlord testified that they served each of the tenants with the notice of application and evidence by registered mail sent on May 16, 2020. The landlords submitted four valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that each of the tenants is deemed served with the landlord's materials on May 21, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

This tenancy began in 2014. Monthly rent was \$2,550.00 payable on the first day of each month. A security deposit of \$1,225.00 was collected at the start of the tenancy and is still held by the landlords.

There was a previous hearing under the file numbers on the first page of this decision. The issues in the earlier hearing included the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 15, 2020, and the landlords' application for a monetary award for unpaid rent for the months of March and April, 2020. In the earlier decision the presiding arbitrator found that "the tenancy ended based on the 10 Day Notice, [on its effective date] which was March 15, 2020". The arbitrator also granted a monetary award in the landlords' favour for the equivalent of March and April 2020 rent.

The tenants continued to occupy the rental unit after the issuance of the earlier decision and orders, and failed to pay any amount to the landlords for the months of May and June 2020. The landlord now seeks a monetary award in the amount of \$5,100.00, the equivalent of the rent for those months that the tenants continued to occupy the rental unit after the effective date of their 10 Day Notice.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Pursuant to section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation") a landlord must give a tenant a repayment plan if there is overdue rent that became payable during the specified period between March 18, 2020 and August 17, 2020. Residential Tenancy Policy Guideline 52 elaborates on this by stating that, "If a tenancy has ended prior to a repayment plan being given...the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order."

I accept the undisputed evidence of the landlord that this tenancy has ended in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent and the decision of the branch upholding the notice dated April 27, 2020. As such, I find that there was no obligation on the part of the landlords to issue a repayment plan to the tenants.

I accept the evidence of the landlords that the tenants made no payment during the period in which they overheld the rental unit after the tenancy had ended. I accept the evidence of the landlords that the tenants failed to vacate the rental unit until sometime in June, 2020. Section 57(3) of the *Act* provides that a landlord may claim compensation from an overholding tenant for the period they occupy the rental unit after the tenancy has ended. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$5,100.00, the equivalent of the monthly rent for the months of May and June, 2020.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlords' favour

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$3,975.00. 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 *Residential Tenancy Act*.

Dated: September 14, 2020

Residential Tenancy Branch