



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for unpaid rent for the Landlord in the amount of \$400.00, retaining that much of the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

The Landlords, C.B. and P.M., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served the Tenant with their Application, Notice of Hearing and documentary evidence by email, sent on May 15, 2020. The Landlords said they sent these documents to an email address provided by the Tenant and with which they had communicated back and forth in the past. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords in the absence of the Tenant.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application and provided the Tenant's email address in the hearing. The Landlords confirmed their understanding that the Decision would be emailed to both Parties, and any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlords submitted a copy of the Parties' tenancy agreement and confirmed the following details of the tenancy. The fixed term tenancy began on December 15, 2017, and was to run to May 31, 2018; it then operated on a month-to-month basis, until the Tenant moved out on April 30, 2020. The Tenant paid the Landlords a monthly rent of \$4,000.00, due on the first day of each month, and he paid them a security deposit of \$2,000.00 and no pet damage deposit. The Landlords said they returned \$1,600.00 of the Tenant's security deposit and retained \$400.00 to apply to this claim.

In the hearing, the Landlord, P.M., said:

Okay, I'll make it brief. The Tenant gave permission for the entry [of a prospective tenant to view the rental unit]. On the 28th of March, he gave a verbal permission for the property to be shown. His sub-tenant was to let the prospective tenant into the house above. That took place on the 29th of March, a day prior to the emergency order, which was effective on the 30th. The permission and the visit took place per section 29(1)(a) [of the Act].

On the 31st, the Tenant heard that the visit had taken place, and he sent an email expressing concern and saying that he would then have to postpone his visit to the house, and to pickup his children, who live nearby. He wasn't living there at the time. He was concerned about hygiene, because of Covid19. He, in fact, did that and announced he was withholding three days rent. We don't believe he had any justification to do that. He suffered nothing regarding the delay of his return. There was no right to withhold the rent. The [prospective] tenants' visit – they wore gloves and masks - so we believe that his concerns are arbitrary. There's

no basis for him to withhold any funds.

[The Tenant] said that the visit was in violation of the Act or regs and violated the terms of the lease. Nothing in the lease that we could find was violated. Nothing in the regs. If the visit had taken place on the 30th, he might have had some grounds, but none of us were aware of the [state of emergency] Order when the visit was planned or when it took place.

The reference in the Act is section 29(1)(a). As of March 30, well, that was the emergency Order.

The phone call on the 28th was pivotal. [The Tenant] didn't mention that he was going to return to pick up his children imminently or his concern about hygiene. None of that was raised. That came afterwards in an email on the 31st in March.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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 the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlords on April 1, 2020. I find that the Landlords are entitled to recovery of the \$400.00 rent the Tenant withheld from the rent owed to the Landlords on April 1, 2020.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit in full satisfaction of the Landlord's monetary award. I, therefore, award the Landlords with recovery of the \$400.00 that the Tenant withheld in rent for April 2020, pursuant to sections 26 and 67 of the Act. I authorize the Landlords to retain \$400.00 of the security deposit they hold for this Application, pursuant to section 72(2)(b) of the Act in full satisfaction of the award.

I also award the Landlords with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act. I grant the Landlords a \$100.00 Monetary Order in this regard pursuant to section 67 of the Act.

Conclusion

The Landlords' Application for recovery of unpaid rent is successful in the amount of \$400.00. Further, the Landlords are awarded recovery of their \$100.00 Application filing fee from the Tenant for a total Monetary Award of \$500.00.

The Landlords are authorized to keep the Tenant's security deposit of \$400.00 in partial satisfaction of the Landlord's Monetary Award. I further grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$100.00** for the remainder of the Monetary Award owing by the Tenant to the Landlords.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 16, 2020

Residential Tenancy Branch