



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- an order of possession for cause and for breach of an agreement, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and the "male landlord" did not attend this hearing, which lasted approximately 14 minutes. The female landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords").

The landlord testified that she sent a copy of the landlords' application for dispute resolution hearing package to the tenant by way of registered mail on August 14, 2020 to the rental unit where the tenant was still residing. The landlord confirmed a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on August 19, 2020, five days after its registered mailing.

At the outset of the hearing, the landlord confirmed that the tenant vacated the rental unit on August 31, 2020, and she no longer required an order of possession. Accordingly, this portion of the landlords' application is dismissed without leave to reapply and the landlords' One Month Notice to End Tenancy for Cause, dated July 23, 2020 ("1 Month Notice") is cancelled and of no force or effect.

The landlord confirmed that the landlords applied for damages of \$1,875.00 prematurely, when they first filed their application on August 6, 2020, while the tenant was still living in the rental unit. I notified her that this portion of the landlords' application was dismissed with leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain the tenant's security and pet damage deposits?

Are the landlords entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on January 1, 2018 and ended on August 31, 2020. Monthly rent in the amount of \$1,921.88 was payable on the first day of each month. A security deposit of \$937.50 and a pet damage deposit \$937.50 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties.

The landlords seek a monetary order of \$1,921.88 for unpaid August 2020 rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenant failed to pay August 2020 rent and it was still outstanding.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,921.88 for August 2020. Therefore, I find that the landlords are entitled to \$1,921.88 in rental arrears from the tenant.

The landlords continue to hold the tenant's security deposit of \$937.50 and pet damage deposit of \$937.50, totalling \$1,875.00. Over the period of this tenancy, no interest is payable on the deposits. The landlords applied to retain the deposits in this application. In accordance with section 72 of the Act, I order the landlords to retain both deposits totalling \$1,875.00, against the monetary order of \$1,921.88, leaving a balance due of \$46.88.

As the landlords were partially successful in this application, I find that they are entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

The landlords' application for an order of possession for cause and for breach of agreement is dismissed without leave to reapply. The landlords' 1 Month Notice, dated July 23, 2020, is cancelled and of no force or effect.

I order the landlords to retain the tenant's security and pet damage deposits, totalling \$1,875.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$146.88 against the tenant. 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.

The landlords' application for a monetary order for damage to the rental unit is dismissed with leave to reapply.

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 17, 2020

Residential Tenancy Branch