



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 25, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities
- permission to retain the security deposit to offset the rent she is owed; and,
- to recover the filing fee for the cost of this application.

The Landlord provided testimony at the hearing. The Tenants did not attend the hearing.

The Landlord testified that she sent a copy of the Notice of Hearing to each of the Tenants at their respective email addresses (as listed on the application) on May 27, 2020.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency. In short, email service was acceptable at the time the Landlord filed and served their application to the Tenants, despite the fact that email service is no longer allowed, as of the time of this hearing.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

The Landlord stated that she sent the Notice of Hearing to each of the Tenants at the email addresses they routinely used for communication with the Landlord. The Landlord stated that the Tenants never responded to the email. Pursuant to the above practice directive, I find the Tenants are deemed served with the Notice of Hearing 3 days after it was sent, May 30, 2020.

I note the Landlord initially filed to recover unpaid rent. The Landlord filed an amendment with our office to add on a claim for cleaning expenses. However, the Landlord served this amendment to the Tenants after the acceptable time frame. The rules of procedure state that the respondent must receive all this documentation no later than 14 days before the hearing. The Landlord stated she sent, by registered mail, her evidence and amendment on September 8, 2020. Registered mail is deemed served 5 days after it is sent, which means that the Landlord's evidence and amendment would not be served until September 13, 2020, which is not 14 days before the hearing. As such, the Landlord's amendment for cleaning costs, and all documentary evidence is not admissible.

The only issue applied for correctly was the Landlord's application for unpaid rent. The Landlord is granted leave to reapply for cleaning costs.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that monthly rent is \$1,350.00, and is due on the first of the month. The Landlord testified that she holds a security deposit in the amount of \$600.00. The Landlord also stated that they served the Tenants with a 2 Month Notice to End Tenancy in February 2020, although they could not recall the exact date, and did not provide a copy of this Notice. The Landlord stated that the Tenants were given March as a free month's rent pursuant to this Notice, but they failed to make rent payments for April and May. The Landlord stated that the Tenants moved out towards the end of May.

The Landlord stated the Tenants did not have to pay March rent, due to the Notice. For April and May rent, the Landlord stated they only ever got a \$500.00 temporary rent supplement from the government, and nothing else was paid by the Tenants for either April or May. As a result, the Landlord stated that the Tenants owe \$850.00 for April, and \$850.00 for May, totalling \$1,700.00. The Landlords would like to retain the security deposit of \$600.00 and receive a monetary order for \$1,100.00 on top of this.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's undisputed documentary evidence and testimony before me to demonstrate that the Tenants owe and have failed to pay \$1,700.00 in rent for April and May 2020.

Since the Landlord was successful in this application, I award her the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act.

Section 72 of the *Act* allow me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: April and May 2020	\$1,700.00
Filing Fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$600.00)
TOTAL:	\$1,200.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,200.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 25, 2020

Residential Tenancy Branch