



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 landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of \$10,750.00 for unpaid rent or utilities, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing and gave affirmed testimony. The landlords were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated June 9, 2020 (Notice of Hearing), the application and documentary evidence were considered. The landlords provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by email on June 24, 2020. Email service was permitted between March 30, 2020 and June 24, 2020 by a Director's Order due to COVID-19. The landlords affirmed that 3 hours after the mail was sent to the tenant, the tenant responded to the email from the landlords. As a result, I find the tenant was sufficiently served as required by the Act. In addition, I find this matter to be undisputed by the tenant as the tenant was served and did not attend the hearing. Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matters

At the outset of the hearing the landlord confirmed the email addresses for both parties. The landlords confirmed their understanding that the decision would be emailed to both parties and that any resulting orders would be emailed to the landlords only for service on the tenant.

In addition, the landlords testified that in addition to the rent owed until June 2020, the tenant has subsequently not paid the rent for July and August of 2020. As a result, the landlords requested to amend their application to include rent owed or lost for July and August of 2020. The landlords also stated that the tenant vacated the rental unit on September 3, 2020, so now owes the full amount of rent as any payment plan because due once the tenancy ends. The landlords were advised that I will permit the amendment to add the July and August 2020 rent owing as I find that such an amendment would not prejudice the tenant as the tenant would know or ought to know that rent is due in accordance with the tenancy agreement. As a result, I will consider July and August 2020 rent owing, in addition to the original claim for April, May and June 2020 rent.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2019 and reverted to a month to month tenancy after December 31, 2019. Monthly rent was \$3,850.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,925.00 at the start of the tenancy, which has accrued no interest under the Act, and which the landlord continues to hold.

The landlords' amended monetary claim of \$18,250.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid April 2020 rent	\$3,850.00
2. Unpaid portion of May 2020 rent	\$2,850.00

3. Unpaid June 2020 rent	\$3,850.00
4. Unpaid July 2020 rent	\$3,850.00
5. Unpaid August 2020 rent	\$3,850.00
TOTAL	\$18,250.00

The landlords described the table above in detail and testified that the only partial payment of rent was in May 2020 in the amount of \$1,000.00, which is why May 2020 rent being claimed is \$2,850.00 and not \$3,850.00.

The landlords are also seeking the filing fee and to offset the amount owing by retaining the tenant's \$1,925.00 security deposit.

The landlords clarified that while they created a repayment plan, that is no longer relevant as the tenant vacated the rental unit on September 3, 2020 and as the tenancy has ended owes the full amount of rent owing.

Analysis

Based on the undisputed documentary evidence presented, the undisputed testimony of the landlords and on the balance of probabilities, I find the following.

Firstly, section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.
[Emphasis added]

In addition, RTB Policy Guideline 52 applies and states:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.
[Emphasis added]

In the matter before me, I find the tenant has breached section 26 of the Act and owes a total of **\$18,250.00** for unpaid rent as claimed and as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid April 2020 rent	\$3,850.00
2. Unpaid portion of May 2020 rent	\$2,850.00
3. Unpaid June 2020 rent	\$3,850.00
4. Unpaid July 2020 rent	\$3,850.00
5. Unpaid August 2020 rent	\$3,850.00
TOTAL	\$18,250.00

As the landlords' claim is fully successful, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlords have established a total monetary claim of **\$18,350.00**.

As the landlords continue to hold the tenant's \$1,925.00 security deposit and pursuant to sections 38 and 67 of the Act, I grant the landlords authorization to retain the tenant's full \$1,925.00 security deposit, which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the balance owing by the tenant to the landlords in the amount of **\$16,425.00**.

I caution the tenants not to breach section 26 of the Act in the future.

Conclusion

The landlords' claim is fully successful.

The landlords have established a total monetary claim of \$18,350.00 as indicated above. The landlords have been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$1,925.00 in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the Act.

The landlords are granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlords in the amount of \$16,425.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant may be held liable for the costs associated with enforcing the monetary order.

The tenant has been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenant.

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: October 7, 2020

Residential Tenancy Branch