



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPL, FFL**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord"). The tenant attended, assisted by an interpreter and advocate.

As both parties were present service was confirmed. The parties each testified that they were served with the materials. Based on the testimonies I find each party served with the respective materials in accordance with sections 88 and 89 of the *Act*.

During the hearing the parties stated that the tenant has vacated the rental unit and an order of possession is no longer being sought by the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy began in December, 2019. Monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and is still held by the landlord. The tenant has vacated the rental unit sometime prior to the hearing date and the tenancy has ended.

The tenant confirmed that there is a rental arrear of \$3,000.00 arising from unpaid rent for July and August, 2020.

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.

I accept the undisputed evidence of the parties that there was an enforceable tenancy agreement wherein the tenant was obligated to pay monthly rent in the amount of \$1,500.00. I accept the evidence of the parties that the tenant failed to pay rent for the months of July and August, 2020 and that there is a rental arrear of \$3,000.00 as at the date of the hearing.

While the rental arrear arises from the months of July and August, 2020, affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

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.

Accordingly, as the parties have testified that this tenancy has ended, I issue a monetary order in the landlord's favor in the amount of \$3,000.00 as at the date of the hearing.

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

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

While the parties made some reference to abandoned personal possessions of the tenant which were handled in a manner in breach of Part 5 of the Regulations, I find that this claim is not before me and make no finding on the parties' position regarding personal property.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,350.00, allowing the landlord to recover the unpaid rent and filing fee and retain the deposit for this tenancy. 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.

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: October 13, 2020

Residential Tenancy Branch