



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 dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Authorization to withhold the security deposit towards rent owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. Neither the Tenants nor an agent acting on their behalf attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that respondents must each be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent individually to each of the Tenants by registered mail on June 30, 2020, at the forwarding address given to them by the Tenants at the end of the tenancy. The Landlord stated that despite their requests, the Tenants refused to provide them with their forwarding address in writing but provided it verbally by phone. The address verbally given to the Landlord has been recorded on the cover page of this decision for reference.

Based on the Landlords affirmed and undisputed testimony, I am satisfied that the Tenants intentionally avoided providing their forwarding address to the Landlord in writing. None the less, I find the address recorded on the cover page of this decision constitutes a valid address for service for the Tenants as I am satisfied that it is the address provided to the Landlord by the Tenants verbally at the end of the tenancy.

The Landlord provided me with the copies of the registered mail tracking slips, which include the names of the Tenants, the postal code used for mailing and the tracking numbers. The Canada Post website confirms that the registered mail was sent as described above and delivered to each recipient on July 6, 2020. As stated above, I am satisfied that the address used by the Landlord for the register mail constitutes a valid address for service. Further to this, the registered mail tracking information from Canada Post confirms the items were delivered to the recipients and there is no evidence before me that these items were returned as delivered incorrectly. As a result, I find that the Tenants were each served with the above noted documents in accordance with the Act and the Rules of Procedure on July 6, 2020.

Based on the above and pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to withhold the security deposit towards rent owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed by the Landlord on November 21, 2019, and the Tenants on November 28, 2019, states that the fixed term tenancy commenced on December 1, 2019, and was set to end on December 31, 2021. The tenancy agreement states that rent in the amount of \$2,800.00 is due on the first day of each month, and that a \$1,400.00 security deposit was paid. During the hearing the Landlord agreed that these are the correct terms of the tenancy agreement, with the exception of the end date for the fixed term, which should have been December 31, 2020, and that they still hold the Tenants' \$1,400.00 security deposit in trust.

The Landlord stated that on April 1, 2020, at approximately 2:30 P.M. the Tenant M.B. contacted them by phone to advise them that they were having financial difficulties and would be ending the tenancy by the end of the weekend. The Landlord stated that the Tenants failed to give proper written notice to end the tenancy as required and broke their fixed-term tenancy agreement by ending it early. The Landlord also stated that the Tenants did not fully vacate the rental unit until May 12, 2020.

The Landlord stated that at the time the tenancy ended, May 12, 2020, the Tenants owed \$9,500.00 in outstanding rent as follows:

- \$1,100.00 for February 2020;
- \$2,800.00 for March 2020;
- \$2,800.00 for April 2020; and
- \$2,800.00 for May 2020.

The Landlord stated that despite repeated attempts by them to have the Tenants enter into a payment plan and begin payments for the outstanding rent noted above, the Tenants have avoided the issue and have made no payments. As a result, the Landlord sought retention of the Tenants' \$1,400.00 security deposit towards the outstanding rent owed, a monetary order for the balance owing, as well as recovery of the \$100.00 filing fee. In support of their testimony the Landlord provided documentary evidence including but not limited to copies of email communications with the Tenants, an etransfer receipt for the last payment of rent allegedly made by the Tenants, copies of text messages, a copy of the tenancy agreement, and a monetary order worksheet.

No one appeared on behalf of the Tenants to provide any documentary evidence or testimony for my consideration.

Analysis

Section 26 (1) of the Act states that 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 the Act to deduct all or a portion of the rent. Based on the documentary evidence before me and the affirmed and uncontested testimony of the Landlord, I am satisfied that rent in the amount of \$2,800.00 was due on the first day of each month, that the tenancy ended on May 12, 2020, and that \$9,500.00 in outstanding rent was owed at the time the tenancy ended.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 45(4) of the Act also states that any such notice must comply with section 52 of the Act.

Based on the Landlords affirmed and uncontested testimony, I am satisfied that the Tenants' failed to give proper notice to end their tenancy under the Act, as no written notice in compliance with section 52 of the Act was given, and that they breached section 45(2) of the Act by ending their fixed-term tenancy earlier than allowable under the tenancy agreement and the Act. I am also satisfied that they owe \$9,500.00 in outstanding rent for February, March, April and May of 2020.

Based on the Landlords affirmed testimony, and as there is no documentary evidence or testimony before me to the contrary, I am satisfied that the Tenants have failed to provide the Landlord with their forwarding address in writing. As a result, I find that the 15 day requirement for the return of the security deposit under section 38(1) of the Act has not yet been triggered.

Based on the above, I therefore grant the Landlord authorization to withhold the entire \$1,400.00 security deposit towards the above noted rent owed, pursuant to section 72(2)(b) of the Act. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore find that the Landlord is entitled to a Monetary Order in the amount of \$8,200.00 (\$9,500.00 in outstanding rent, plus

\$100.00 for recovery of the filing fee, less the \$1,400.00 security deposit retained) and I order the Tenants to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$8,200.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 Tenants are cautioned that costs of such enforcement are recoverable from them by the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 19, 2020

Residential Tenancy Branch