



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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 8, 2020 to the rental unit address. The landlords clarified that the tenant was later evicted as per a writ of possession in early August 2020. I accept the undisputed affirmed evidence that the landlords served the tenant with notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail as per sections 88 and 89 of the Act.

At the outset, the landlords stated that an amendment to the application for dispute was filed on September 27, 2020 increasing the monetary claim to \$10,144.17 as per the submitted copy of the updated monetary order worksheet dated July 6, 2020. An extensive review of the Residential Tenancy Branch (RTB) Database does not show any submissions for September 27, 2020 or an amendment to the application for dispute. The landlords clarified that the additional amounts are regarding loss of rent, court costs, bailiff costs, damage expenses and duplicate monetary claims based upon a monetary order issued. Despite extensive efforts over a 25 minute period reviewing

the landlord's RTB file, no amendment was found nor any entries for September 27, 2020. On this basis, the landlord's monetary claim is limited to the original application filed of \$5,450.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the tenants entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided direct testimony that this tenancy began on January 15, 2020 on a fixed term tenancy for 12 months as per the submitted copy of the signed tenancy agreement. The monthly rent was \$1,350.00 payable on the 1st day of each month and a security deposit of \$675.00 was paid.

The landlords seek a monetary claim of \$5,450.00 which consists of:

\$5,400.00	Unpaid Rent, 4 months (April, May, June and July 2020 @\$1,350.00)
-\$50.00	Overpayment from previous Monetary Order (file number noted on cover)
\$5,350.00	Total Rental Arrears

The landlords stated that the tenant has failed to pay monthly rent of \$1,350.00 for 4 months (April, May, June and July 2020) before being evicted in early August 2020 by bailiffs.

The landlords referred to the below text messages during the hearing when asked if there was any supporting evidence that the tenant failed to pay rent for April, May, June and July 2020 in the landlord's document file, "text_conversation_detailing_tenant_hasn't_paid_rent". The landlord referred to dated entry, "03/07/20 2:49pm (Viewed 03/07/20 2:59pm) and states in part,

...Unpaid rent is not a valid caused eviction and I haven't been issued proper dated notice.

The landlord repeated cited this sentence as his proof that the tenant did not pay any rent for April, May, June or July of 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.

In this case, the landlords provided undisputed affirmed testimony that the tenant fail to pay rent of \$5,350.00 in unpaid rent for April, May, June and July of 2020. As the tenant has been properly served and despite being served did not attend and participate or submit any documentary evidence. On this basis, I find that the landlord has established a monetary claim for unpaid rent of \$5,350.00.

I authorize the landlords to retain the \$675.00 security deposit in partial satisfaction of this claim. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$4,775.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 27, 2020