



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for unpaid rent, pursuant to section 67;
- an authorization to retain the tenants' security deposit, under section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 2:00 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Advocate HL also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his advocate and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) in person on July 25, 2020 at 7:45 P.M. at the rental unit, in accordance with section 89(1)(a) of the Act. Two witnessed proof of service declarations were submitted into evidence. The landlord attempted to serve a second evidence package containing a document named "Returned Check for Sep Rent" on October 02, 2020 and was not able to, as the tenants were not residing at the rental unit. I do not accept this evidence.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$5,188.00 in unpaid rent to include an additional \$5,188.00 for the unpaid rent of September and October 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$10,376.00.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate his application.

The landlord testified the fixed-term tenancy started on August 01, 2019 and ends on July 31, 2021. Monthly rent was \$2,500.00 and the monthly flat rate for utilities was \$94.00. At the outset of the tenancy a security deposit of \$1,250.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The tenants did not pay rent for July 2020. On August 07, 2020 the tenants informed the landlord the cheques for future rent payments were cancelled (text message submitted into evidence). Copies of the returned cheques dated July 01 and August 01, 2020 were also submitted into evidence. The landlord affirmed the tenants did not pay rent in July, August, September and October 2020.

On October 01, 2020 the landlord inspected the rental unit and learned the tenants moved out. A neighbour told the landlord the tenants moved out a few days before October 01, 2020. The tenants did not serve the landlord a notice to end tenancy.

A monetary order worksheet was presented into evidence. The landlord affirmed the rental unit was damaged by the tenants and the landlord is currently repairing the damages caused by the tenants in order to try to re-rent the rental unit as soon as possible.

Analysis

I find that the tenants agreed to a fixed-term tenancy and are obligated to pay the monthly rent in the amount of \$2,500.00 and utilities in the amount of \$94.00 on the first day of each month. 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 this Act. Pursuant to section 26(1) of the Act.

Based on the landlord's undisputed testimony, tenancy agreement, July 01 and August 01, 2020 cheques returned and the monetary order worksheet, I find the tenants did not pay rent in accordance with sections 26(1) and 45 of the Act and owe rent and utilities to the landlord in the amount of \$10,376.00 for July to October 2020.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$1,250.00 security deposit to offset the monetary award.

In summary, the landlord is entitled to:

Unpaid rent and utilities for July 2020	\$2,594.00
Unpaid rent and utilities for August 2020	\$2,594.00
Unpaid rent and utilities for September 2020	\$2,594.00
Unpaid rent and utilities for October 2020	\$2,594.00
Filing fee	\$100.00
Subtotal	\$10,476.00
Minus deposit	\$1,250.00
Total monetary award	\$9,226.00

Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenants' security deposit of \$1,250.00 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of **\$9,226.00**.

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.

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: November 17, 2020

Residential Tenancy Branch