



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, FFL**

Introduction

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

- A monetary award 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.

As both parties were present service was confirmed. The tenant testified that they were served with the landlord's materials and that they have not served any materials. Based on the testimonies I find the tenant is duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

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

This fixed-term tenancy was scheduled to begin on August 1, 2020. The monthly rent was \$1,299.00 payable on the first of each month. A copy of the signed tenancy agreement was submitted into evidence. The agreement is signed by the tenant on July 15, 2020 and the landlord on July 17, 2020.

The parties agree that the tenant failed to pay a security deposit for this tenancy and failed to take possession of the rental unit on August 1, 2020. Upon learning that the tenant intended to break the tenancy the landlord advertised the suite and found a new occupant to take possession as of September 1, 2020. The landlord now seeks a monetary award in the amount of \$649.50, the equivalent of ½ a month's rent.

The tenant submits that they did not understand that signing a tenancy agreement created an enforceable agreement between the parties. The tenant said that they believed that the form signed merely indicated their interest in the rental unit and did not create any obligation on the parties. The tenant said they believed that the agreement only came into effect upon payment of a security deposit.

Analysis

Section 1 of the *Act* defines a tenancy agreement as:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit

Pursuant to section 16 of the *Act*:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find the tenant's submissions that there was no enforceable agreement between the parties to be unpersuasive. It is evident that the parties intended to create a tenancy agreement, that they had agreed upon an amount of monthly rent and the start date of this tenancy and signed a standard form agreement setting out their respective rights and obligations.

I find that payment of a security deposit is not a condition of entering a tenancy agreement but a term of the agreement itself. The parties had already entered into an enforceable agreement through their meeting of minds and the terms were recorded in the standard form tenancy agreement. The tenant's subsequent failure to pay the security deposit pursuant to the tenancy agreement does not invalidate that there was an enforceable agreement between the parties.

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.

Pursuant to the tenancy agreement signed by the parties the tenant was obligated to pay rent in the amount of \$1,299.00. I accept the evidence of the parties that the tenant failed to pay any rent for the month of August, 2020 and the landlord incurred losses as a result. I accept the landlord's submission that they took reasonable steps to mitigate their losses by finding a new occupant for the rental unit and that they are now seeking the equivalent of ½ a month's rent.

Accordingly, I issue a monetary award in the landlord's favour in the amount of \$649.50 as against the tenant.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$749.50. 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: November 23, 2020

Residential Tenancy Branch