



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 a landlord's application for a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. The landlord appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the landlord's proceeding package upon the tenant. The landlord testified that he sent the proceeding package to the tenant via registered mail at her new address of residence on September 11, 2020. The landlord provided a registered mail receipt, including address and tracking number, as proof of service.

As for how the landlord obtained the tenant's new address of residence, the landlord explained that in late August 2020 he observed what appeared to the tenant removing some of her possessions from the rental unit. Despite the tenant's statements that she was merely "spring cleaning" the landlord was suspected she may be moving out so he followed her and determined she had moved into another rental unit after confirming that with the landlord at the new address.

Based on the unopposed submissions before me, I accepted that the landlord sent the proceeding package to the tenant at her new address of residence via registered mail and that complies with the service requirements of section 89(1) of the Act. Therefore, I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, as claimed?
2. Are the landlords authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The landlord submitted that the parties entered into an oral tenancy agreement that started on April 1, 2019 on a month to month basis. The tenant paid a \$600.00 security deposit and was required to pay rent of \$1200.00 on the 5th day of every month.

The landlord provided a Shelter Information form signed by the landlord on March 5, 2019 and copies of a rent cheque dated May 5, 2020 and a rent cheque dated June 5, 2020 as evidence the parties had a tenancy agreement as described above.

The landlord submitted that the tenant put a stop payment on the rent cheque dated June 5, 2020 but the rent for July 5, 2020 was paid. The landlord provided a copy of the statement received from the bank showing a stop payment had been placed on the June 5, 2020 cheque.

The landlord testified that the tenant did not pay rent that was due on August 5, 2020 and in late August 2020 he observed the tenant removing possessions from the rental unit. On September 1, 2020 other people appeared to be trying to move into the rental unit, telling the landlord that the tenant had moved to another location, but the landlord stopped them from moving in. On September 2, 2020 a friend of the tenant came and removed the last of the tenant's possessions from the rental unit. The landlord proceeded to advertise the rental unit for rent and secured replacement tenants for October 1, 2020.

The landlord is seeking to recover unpaid rent for June 2020, August 2020 and September 2020 from the tenant.

Analysis

I accept the evidence before me, including the landlord's oral testimony that is consistent with the documentation he presented, that the parties had a month to month tenancy agreement requiring the tenant to pay rent of \$1200.00 on the fifth day of every month.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

I accept the unopposed evidence before me that the tenant put a stop payment on the rent cheque dated June 5, 2020 and I find the landlords entitled to recover the unpaid rent from the tenant.

I also accept the unopposed testimony of the landlord that the tenant failed to pay rent that was due on August 5, 2020 and I find the landlords entitled to recover the unpaid rent from the tenant.

A tenant is required to pay rent until the end of the tenancy. A tenancy ends in ways provided under section 44 of the Act. Section 44(1)(d) provides that a tenancy ends when a tenant vacates or abandons the rental unit. Based on the landlord's unopposed testimony, I accept that the tenant vacated or abandoned the rental unit on September 2, 2020 and that is the date the tenancy ended pursuant to section 44(1)(d) of the Act.

In order for the tenant to avoid responsibility for loss of rent for September 2020, the tenant would have to have given the landlord one full month of advance written notice, as provided under section 45(1) of the Act. I was not presented any evidence that the tenant gave the landlords any such notice and the landlord submitted unopposed evidence that the landlord suffered loss of rent until October 1, 2020. Therefore, I find the tenant is responsible to compensate the landlords for the loss of rent for the period of September 5, 2020 through September 30, 2020 which I calculate the loss to be \$1000.00 [calculated as \$1200.00 x 25/30 days] and I award the landlords \$1000.00 for loss of rent for September 2020.

Given the landlords were largely successful in this Application for Dispute Resolution, I award the landlords recovery of the \$100.00 filing fee.

I authorize the landlords to retain the tenant's security deposit in partial satiation of the unpaid rent.

In light of all of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent that was due on June 5, 2020	\$1200.00
Unpaid rent that was due on August 5, 2020	1200.00
Loss of rent for the period of September 5 – 30, 2020	1000.00
Filing fee	100.00
Less: security deposit	<u>(600.00)</u>
Monetary Order	\$2900.00

Conclusion

The landlords are authorized to retain the tenant's security deposit and the landlords are provided a Monetary Order for the balance of \$2900.00 to serve and enforce upon the tenant.

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: December 16, 2020

Residential Tenancy Branch