



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL X LP and Metcap Living Management
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL -S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, late fees; and, authorization to retain the tenant's security deposit.

The landlord was represented at the hearing by an agent. There was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of the hearing documents upon the tenants.

The landlord's agent testified that the proceeding package was sent to each of the tenants at the rental unit on December 10, 2020 via registered mail and the registered mail packages were successfully delivered on December 15, 2020. The landlord's agent confirmed that the tenants were living at the rental unit until they moved out on December 31, 2020. The landlord provided copies of the registered mail receipts, including tracking numbers, as proof of service. I was satisfied the tenants were duly served with notification of this proceeding and I continued to hear from the landlord's agent without the tenant's present.

Since the tenants have already vacated the rental unit, the landlord's agent confirmed that an Order of Possession is no longer required. As such, I do not provide one with this decision.

I noted that the landlord's name on the tenancy agreement, the ledger, and this Application for Dispute Resolution were all different. I explored the correct naming of the landlord with the agent appearing before me. The agent stated the landlord ought to be named as that appearing on the tenancy agreement care of the property

management company acting as its agent. The agent before me requested the Application for Dispute Resolution be amended accordingly. I noted the property management company had issued the 10 Day Notice that had been submitted as evidence and the agent testified the tenants had been paying rent to the property management company. Therefore, I amended the style of cause to reflect the landlord as being the entity named on the tenancy agreement and the property management company that filed this Application for Dispute Resolution.

Issue(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for unpaid rent and late fees, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on March 1, 2019 for a fixed term of one year. The tenancy continued on a month to month basis upon expiry of the fixed term. The tenants paid a security deposit of \$906.88 and were required to pay rent of \$1813.76 on the first day of every month.

The landlord's agent testified that the rent was increased to \$1860.91 starting March 1, 2020 (an increase of \$47.15); however, the landlord did not provide a copy of a Notice of Rent Increase as evidence to support the landlord's position that the rent was increased.

The landlord is seeking to recover unpaid rent for the period of December 2019 through March 2020 in the amount of \$1810.91. The landlord's agent submitted that this amount is calculated as being unpaid rent for December 2019 in the amount of \$1813.76, less a \$50.00 overpayment made in January 2020, plus the tenant's failure to pay the rent increase of \$47.15 for the month of March 2020.

For the months of April 2020 through August 2020 the landlord submitted that the tenants paid the amount of rent indicated on their tenancy agreement but they did not pay the rent increase of \$47.15 for these months and the landlord seeks to recover the unpaid rent increase of \$47.15 for each of the months of April 2020 through August 2020.

The landlord submitted that for the months of September 2020 through December 2020 the tenants did not pay any rent even though they were occupying the rental unit throughout these months and the landlord seeks to recover \$1860.91 for each of these months from the tenants.

In addition, the landlord seeks to recover late fees totalling \$125.00 for three months of December 2019 through February 2020. I instructed the landlord to point out the clause in the tenancy agreement that provides for late fees. The landlord's agent was unable to locate the applicable clause.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the landlord bears the burden of proof, based on the balance of probabilities.

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

Upon review of the tenancy agreement, I find the tenants were obligated to pay rent of \$1813.76 on the first day of every month. I accept the unopposed evidence before me that the tenants failed to pay rent for December 2019 in this amount. As such, I grant the landlord's request to recover this amount, less the overpayment of January 2020; however, I deny the landlord's request for the unpaid rent increase of March 2020 as the landlord did not provide me with a copy of a Notice of Rent Increase to demonstrate the rent was lawfully increased from the amount stipulated in the tenancy agreement. Therefore, I award the landlord \$1763.76 of their \$1810.91 claim for the period of December 2019 through March 2020.

In keeping with the above, I find there to be insufficient evidence to demonstrate the landlord's entitlement to a rent increase for the subsequent months of April 2020 through August 2020 and I dismiss these claims, without leave to reapply.

As for the months of September 2020 through December 2020, I accept the unopposed evidence before me that the tenants failed to pay any rent for these months even though they were occupying the rental unit. As provided in the tenancy agreement, I

find the landlord entitled to recover unpaid and/or loss of rent in the amount of \$1813.76 for each of these months and I award the landlord that sum.

With respect to the landlord's request for late fees, a landlord must be prepared to show the tenancy agreement provides for a valid and enforceable late fee clause. Section 7 of the Residential Tenancy Regulations limits the amount of a late fee to be \$25.00 and requires a late fee term to be in the tenancy agreement. The landlord made a claim for \$125.00 in late fees for three months which would appear to exceed the allowable maximum amount and the landlord was unable to point to a valid late fee clause in the tenancy agreement. Therefore, I dismiss the landlord's claim for late fees, without leave to reapply.

Given the landlord had some success in this Application for Dispute Resolution, I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

By way of this decision, I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenants, calculated as follows:

| | |
|---|-----------------|
| Unpaid Rent for December 2019 (\$1813.76 – \$50.00) | \$1763.76 |
| Unpaid rent for Sept through Dec 2020 (\$1813.76 x 4) | 7255.04 |
| Filing fee | 100.00 |
| Less: security deposit | <u>(906.88)</u> |
| Monetary Order | \$8211.92 |

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$8211.92 to serve and enforce upon the tenants.

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: January 19, 2021

Residential Tenancy Branch