



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S; MNDCL -S; FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

The landlords appeared at the hearing; however, there was no appearance on part of the tenants. Since the tenants did not appear, I explored service of the hearing documents upon each of the tenants.

The landlord testified that two proceeding packages were given to the male tenant, in person at the residential property, by the basement suite tenant on October 9, 2020. The person who did the service signed a document at describing service. I was satisfied the male tenant was duly served; however, I was not satisfied the female tenant was duly served and I excluded the female tenant as a named party. I proceeded to hear the landlord's claims against the male tenant only.

The landlords requested the style of cause be amended to remove the nicknames of the parties that the landlords had included in filing the Application for Dispute Resolution. The application was amended accordingly.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for unpaid rent for October 2020 and if so, what is the amount the landlords are entitled to recover?
2. Have the landlords established an entitlement to compensation from the tenant for a TV and TV mount under the Act, regulations or tenancy agreement?
3. Are the landlords authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a one year fixed term tenancy that was set to commence on October 1, 2019 and expire on September 30, 2020. The tenancy agreement provides that upon expiry of the fixed term the tenancy would continue on a month to month basis or another fixed length of time. The tenants paid a security deposit of \$937.50 and the tenants were required to pay rent of \$1875.00 on the last day of every month.

The landlords sent a Notice of Rent Increase to the tenants via email on June 8, 2020. The landlords subsequently posted the Notice of Rent Increase to the rental unit door on June 21, 2020. The Notice of Rent Increase indicates the rent is increasing to \$1923.75 starting October 1, 2020.

On October 1, 2020 the tenant emailed the landlord to inform the landlord that they would vacate the rental unit by October 31, 2020. The tenants did not pay any rent for October 2020 and on October 7, 2020 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The tenants did not pay the outstanding rent after the 10 Day Notice was posted.

The landlord testified that the tenants were no longer regularly living at the rental unit after September 2020 but they were coming and going from the unit through October 2020 and their possessions remained in the rental until October 31, 2020 when they left behind some abandoned possessions and garbage.

By way of this application, the landlords seek recovery of unpaid rent of \$1923.75 for the month of October 2020.

In addition, the landlords seek recovery of \$1500.00 for a TV and TV mount taken from the rental unit by the tenants. I noted that the tenancy agreement does not indicate the tenants were provided furniture or a TV. The landlord explained that the landlords and the tenants were very good friends before the tenancy started and the parties swapped TVs resulting in the landlords leaving the wall mounted TV in the rental unit for the tenants to use and the tenants giving the landlords their old TV to use.

Analysis

In order to succeed in a claim made under the *Residential Tenancy Act*, the applicant must prove the other party violated the Act, regulations or tenancy agreement. My jurisdiction to resolve disputes is provided under the *Residential Tenancy Act* and disputes that fall outside of the Act must be resolved in the appropriate forum.

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. A tenant's obligation to pay rent continues until the tenancy ends.

Upon review of the unopposed evidence, I find the tenants were obligated to pay rent every month throughout their fixed term and continuing until the tenancy ended in one of the ways provided under the Act. The landlord received an email from the tenant on October 1, 2020 indicating the tenants would vacate the rental unit by October 31, 2020. Although this is not a proper way to serve a notice to end tenancy, it appears the landlords accepted the notice. Regardless, the tenant's notice does not exempt the tenants from their obligation to pay rent for October 2020. I was not provided any evidence to suggest the parties had ended the tenancy prior to October 2020 or that the tenants had a legal right to withhold rent for October 2020. Therefore, I find the tenants were obligated to pay rent for October 2020 since the tenancy had not ended prior to that by way of proper notice to end tenancy and the tenant's possessions remained in the rental unit.

The landlords seek to recover the increased rent of \$1923.75; however, landlords were prohibited from increasing the rent pursuant to Ministerial Orders issued due to the Covid-19 pandemic. As such, I find the landlords not entitled to the increased rent but they remain entitled to the amount of \$1875.00 as stipulated the tenancy agreement. Therefore, I award the landlords unpaid rent of \$1875.00 for the month of October 2020.

There is no term in the tenancy agreement that indicates the tenants were to be provided a TV as part of their tenancy agreement. Nor, is there any requirement in the Act or its regulations for the landlords to provide the tenants with a TV. Based on the landlord's testimony, I find the landlord's provision of the TV to the tenants to be the result of their friendship with the tenants and not the result of a term of tenancy. Therefore, I find I do not have jurisdiction to resolve the dispute concerning the TV and the parties are at liberty to pursue that matter in the appropriate forum.

Given the landlords were successful in establishing an entitlement to unpaid rent, I further award the landlords recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords with this decision.

In keeping with all of the above, I provide the landlords with a Monetary Order in the net amount of \$1037.50 [calculated as: \$1875.00 + \$100.00 - \$937.50] to serve and enforce upon the tenant.

Conclusion

The landlords are authorized to retain the tenant's security deposit and have been provided a Monetary Order in the net amount of \$1037.50 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: January 22, 2021

Residential Tenancy Branch