



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLARK PARK PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which hearing lasted approximately 20 minutes. The landlord's two agents, landlord SA ("landlord") and "landlord MB" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she was the property management assistant and landlord MB confirmed that she was the property manager, both employed by a property management company. Both landlord agents confirmed that their property management company is authorized to represent the owner of the rental unit, which is the landlord company named in this application.

The landlord stated that the tenants were each served with separate copies of the landlord's application for dispute resolution hearing package on October 22, 2020, both by way of registered mail to the rental unit where the tenants were still residing. The landlord provided two Canada Post receipts with this application. The landlord confirmed both Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on October 27, 2020, five days after their registered mailings.

The landlord testified that the tenants were each served with separate copies of the landlord's application for dispute resolution package on January 12, 2021, both by way of email to the tenants' two separate email addresses. She stated that this was done pursuant to an Adjudicator's substituted service decision, dated January 8, 2021, which was also served by email on the same date ("SS decision"). She claimed that since the original application packages were returned to sender as unclaimed and the tenants did not provide a forwarding address after vacating the rental unit, she wanted to make sure that the tenants got the packages again, but no new evidence was served. The landlord provided copies of both emails, with attachments, and email delivery receipts for both tenants. As per the SS decision, I find that the tenants were both deemed served with the landlord's application again on January 15, 2021, three days after they were emailed.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2018 and ended on October 31, 2020. Monthly rent in the amount of \$2,198.00 was payable on the first day of each month. The rent was increased as per a Notice of Rent Increase, dated August 12, 2019 ("NRI"), issued by the landlord to the tenants to increase the rent, effective December 1, 2019, from \$2,145.00 to \$2,198.00, which is a \$53.00 increase. The landlord provided a copy of the NRI. A security deposit of \$1,072.50 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$3,999.40 plus the \$100.00 application filing fee. The landlord seeks \$3,949.40 for unpaid rent and \$50.00 for NSF fees.

The landlord provided a monetary order worksheet and a rent ledger with this application, showing the unpaid rent and NSF fees. The landlord stated that the tenants failed to pay rent of \$1,748.40 for July 2020, \$2,198.00 for August 2020, and \$3.00 for September 2020, totalling \$3,949.40.

Landlord MB claimed that the tenants' pre-authorized debit rent payments were returned as dishonoured for \$50.00 for each of July and August 2020, totalling \$100.00. However, during the hearing, landlord MB stated that the NSF fees indicated at paragraph 24 of page 6 of the parties' tenancy agreement indicates that only \$25.00 for each NSF can be charged. During the hearing, landlord MB claimed that the landlord was only seeking \$25.00 for each NSF fee for July and August 2020, for a total of \$50.00, rather than the \$100.00 total that was originally sought in the landlord's application.

Analysis

Unpaid Rent

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement.

In this case, I find that rent of \$2,198.00 was due on the first day of each month, effective December 1, 2019. I accept that the rent was legally increased by a valid NRI, dated August 12, 2020, that was issued to the tenants by the landlord. I find that this increase was made after 12 months had passed since the original rent amount of \$2,145.00 was first established as per the parties' tenancy agreement, which began on December 1, 2018. I find that the \$53.00 increase is in accordance with the *Regulation* amount of 2.5% for 2019.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord provided undisputed evidence that the tenants failed to pay rent of \$1,748.40 for July 2020, \$2,198.00 for August 2020, and \$3.00 for September 2020, to the landlord. Accordingly, I find that the landlord is entitled to \$3,949.40 in unpaid rent from the tenants from July to September 2020.

The landlord's rent ledger indicates that the tenant made a repayment plan installment payment for July 2020 rent of \$449.60, leaving a balance of \$1,748.40 owed for July 2020. Although the landlord's monetary order worksheet indicates July 2020 rent of \$1,748.48 was outstanding for July 2020, the landlord confirmed during the hearing and in their rent ledger that this amount was actually \$1,748.40, so only this amount has been awarded to the landlord.

NSF Fees

Section 7 of the *Residential Tenancy Regulation* states the following, in part:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord provided undisputed evidence that the tenants failed to pay NSF fees of \$50.00 to the landlord. Accordingly, I award the landlord \$25.00 for each month of July 2020 and August 2020, for a total of \$50.00 in NSF fees, since the tenants pre-authorized debit rent payments were returned as dishonoured. The \$25.00 fee is indicated in the parties' written tenancy agreement at paragraph 24 on page 6 of the "arrears" section.

Filing Fee and Security Deposit

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

The landlord continues to hold the tenants' security deposit of \$1,072.50. Over the period of this tenancy, no interest is payable on the deposit. As the landlord applied to retain this deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$1,072.50 in partial satisfaction of the monetary award.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,072.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,026.90 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: February 12, 2021

Residential Tenancy Branch