



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords testified that they served each of the tenants with the notice of reconvened hearing and review consideration decision by registered mail sent on February 27, 2021. The landlords submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on March 4, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the original decision be affirmed and upheld, varied or set aside and replaced with a new decision.

Background and Evidence

The landlords commenced this application by filing an application for dispute resolution on August 3, 2020. The landlords submit that they served each of the tenants with their application and evidence on August 13, 2020 by registered mail sent to a forwarding address provided by the tenants. The landlord submitted valid Canada Post tracking receipts and copies of correspondence with the tenants as evidence of service.

The rent for this periodic tenancy was \$1,750.00 payable on the first of each month. A security deposit of \$875.00 was collected and is still held by the landlords. The rental unit is a suite in a detached house. The signed tenancy agreement also provides that the tenants are responsible for paying 60% of the electrical utility bills for the rental property.

The landlords submit that the tenants failed to pay the rent in full for the months of March, April, June and July 2020 before the tenants vacated the rental unit sometime in July, 2020. The landlords submit that there is a rental arrear of \$5,800.00 as at the date of the hearing. The landlords submitted tenant ledgers into documentary evidence in support of their claim.

The landlords also submit that the tenants failed to pay the utilities as required under the tenancy agreement. The landlords testified that the total utility arrears for the tenancy, as at the date of the hearing, is \$434.00. The landlords submitted into evidence the original utility bills for those periods and written demands made to the tenants to pay their portion of the utilities in support of their monetary claim.

Analysis

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.

I accept the undisputed evidence that there was a valid tenancy agreement between the parties wherein the tenants were required to pay rent in the amount of \$1,750.00 each

month and 60% of the electrical utilities for the property. I accept the evidence of the landlords that the tenants breached the agreement by failing to pay rent and utilities when they were due. I further accept the evidence that the total amount of the rental and utility arrears for this tenancy is \$6,234.00.

While the rental arrear arises from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Accordingly, as I accept the evidence of the landlords that this tenancy has already ended, I issue a monetary order in the landlord's favor in the amount of \$6,234.00.

As the landlords were successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary

Conclusion

The decision of November 24, 2020 is set aside and replaced with this decision and accompanying order.

I issue a monetary order in the landlords' favour in the amount of \$5,459.00 under the following terms:

Item	Amount
Unpaid Rent	\$5,800.00
Unpaid Utilities	\$434.00
Filing Fees	\$100.00
Less Security Deposit	-\$875.00
TOTAL	\$5,459.00

The tenants must be served with this Order as soon as possible. Should the tenants 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: March 12, 2021

Residential Tenancy Branch