



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit (the deposit) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:10 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package were sent to both tenants by registered mail on January 18, 2021. The landlord entered written evidence copies of the Canada Post Tracking Numbers, showing that his hearing packages sent to the tenants by Registered Mail. In accordance with sections 89 and 90 of the *Act*, I am satisfied that both tenants were deemed served with the landlord's dispute resolution hearing packages on January 23, 2021, five days later.

At the outset of the hearing the landlord advised that the tenants moved out without notice on March 24, 2021. The landlord testified that he has possession of the unit and no longer requires an order of possession, accordingly; that portion of the landlords' claim is dismissed.

Issues(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenants' deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on or about May 1, 2016. Rent in the amount of \$1742.50 is payable in advance on the first day of each month. The tenants paid a security deposit of \$850.00 which the landlord still holds. The tenants failed to pay rent in the month(s) of January 2021 and on January 2, 2021 the landlord served the tenant with a notice to end tenancy by posting the notice on the door. The tenants further failed to pay rent in the month(s) of February and March. The landlord testified that the tenants eventually paid the rent for January but failed to pay any rent for February and March. The landlord advised that as of today's hearing the amount of unpaid rent is 3485.00. The landlord seeks that amount along with the recovery of the \$100.00 filing fee for this application for a total claim of \$3585.00.

Analysis

The tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice.

Based on the undisputed evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent. Using the offsetting provision under Section 72 of the *Act*, I hereby apply the \$850.00 security deposit against the amount of unpaid rent. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$3585.00. I order that the landlord retain the \$850.00 security deposit in partial satisfaction of the claim, and I grant the landlord an

order under section 67 for the balance due of \$2735.00. This order may be filed in the Small Claims 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: April 13, 2021

Residential Tenancy Branch