



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
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* (the *Act*) for:

- A monetary award for unpaid rent pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "Landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Both parties disputed service of the respective materials. The tenants disputed that they were served with the landlord's application and materials by registered mail but testified that they had obtained all materials and were prepared to proceed. Based on the testimonies I find the tenants sufficiently served in accordance with section 71 of the *Act* with the landlord's materials.

The tenants testified that they served the landlord with their evidence by email sent to an address ordinary used for tenancy matters on April 8, 2021. While the landlord disputes that they received the tenants' evidence in reviewing the evidence I find that much of it is earlier correspondence and tenancy documents which the landlord would have been in a position to review earlier. Pursuant to Residential Tenancy Rule of Procedure 3.17 I find no unreasonable prejudice or breach of the principles of natural

justice to consider the tenant's materials and find it has been sufficiently served in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this tenancy was \$1,413.00 payable on the first of each month. A security deposit of \$684.00 was collected at the start of the tenancy in December 2019 and is still held by the landlord. The tenancy ended on November 29, 2020.

The landlord submits that the tenants failed to pay rent for the months of September, October and November, 2020 and that there is a rental arrear of \$3,949.13 as at the date of the hearing. The landlord submitted the tenant ledger showing the amounts payable and the total balance owing. The parties prepared a move-out condition inspection report dated December 1, 2020 where the tenants provided a forwarding address to the landlords.

The tenants submit that they have paid full rent owing for the tenancy and there is no arrear. The tenants testified that they had provided the landlord with a signed authorization so that the amount of the rent could be deducted from their bank accounts. The tenants submitted into evidence some correspondence discussing rent as proof of payment.

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 evidence of the landlord that rent in the amount of \$1,413.00 was payable on the first of each month. I am satisfied with the evidence that the rent was not paid in full for the months of September, October and November, 2020. I find the tenant ledger to clearly show the balance owing, how it was calculated and find that there is a rental arrear of \$3,949.13 as at the date of the hearing.

I do not find the tenants' submission that the rent has been paid in full to be supported in the evidence. I find the tenants' submission of a voided cheque and some text correspondence to be insufficient to demonstrate that payment was made in full for the rent payable under the tenancy agreement. If the amounts were deducted from the accounts as the tenants claim it would be a simple matter to provide a bank statement showing the exact amount paid to a recipient on a specific date. The tenants failed to provide evidence to demonstrate any payments were made for those specific months.

Based on the evidence I find that the landlord has established that they were entitled to be paid rent in the amount of \$1,413.00, the tenants breached the tenancy agreement by failing to pay the full rent and that there is a rental arrear of \$3,949.13. Accordingly, I issue a monetary award in that amount in the landlord's favour.

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

As the landlord was successful in their application, they are entitled to recover the filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,365.13. The tenants must be served with this Order as soon as possible. Should the tenant 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: April 19, 2021

Residential Tenancy Branch