



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Team Realty Inc and Royal Pacific Realty (Kingsway)
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNRL-S, FFL
 Tenant: LRE, CNL, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord filed an amendment withdrawing the landlord's claim for an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The property manager and two prospective purchasers for the subject rental property attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference

system that the property manager and the prospective purchasers and I were the only ones who had called into this teleconference.

Tenant J.C.C.'s application for dispute resolution listed prospective purchaser R.M. as the landlord. The property manager testified that the agreement for sale between the owner of the subject rental property and the prospective purchasers fell apart when the tenants refused to move out in accordance with the Two Month Notice to End Tenancy for Landlord's Use of Property. Prospective purchaser R.M. testified that the sale of the subject rental property did not complete, and he is not the tenants' landlord.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions I order the tenant's application dismissed without liberty to reapply.

This decision will only consider the landlords' application for dispute resolution.

The property manager testified that the tenants were served with the landlords' application for dispute resolution via registered mail on April 8, 2021. A Canada Post registered mail receipt stating same was entered into evidence. I find that the tenants were served in accordance with section 89 of the *Act*.

The property manager testified that the tenants were served with the landlords' amendment package via registered mail on April 28, 2021. The Canada Post tracking number for the above mailing was provided in the hearing and is located on the cover page of this decision. I find that the tenants were served in accordance with section 88 of the *Act*.

The prospective purchasers and the property manager were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The prospective purchasers and the property manager testified that they are not recording this dispute resolution hearing.

The property manager confirmed the landlords' email address for service of this decision and order.

Preliminary Issue

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlords’ original application claimed unpaid rent in the amount of \$4,600.00. Since filing for dispute resolution, the property manager testified that the amount of rent owed by the tenants has increased to \$9,200.00.

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords’ application to include a monetary claim for all outstanding rent in the amount of \$9,200.00.

The property manager asked for an Order of Possession for unpaid rent. The property manager testified that the landlords have not served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. I advised the property manager that I could not amend the landlords’ application to include an Order of Possession for unpaid rent as the landlords have not yet served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Issues to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
- Are the landlords entitled to retain the tenants’ security deposit, pursuant to section 38 of the *Act*?

- Are the landlords entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The property manager provided the following undisputed testimony. This tenancy began on January 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,300.00 is payable on the first day of each month. A security deposit of \$1,125.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that the tenants have not paid any rent for February to May 2021 and currently owe \$9,200.00 in unpaid rent. The landlord entered into evidence an email between the property manager and tenant J.C.C. dated February 18, 2021 which states:

- Property manager:
 - Today is the 18th of March and I still haven't heard back from you regarding the outstanding rent payment. Please advise.
- Tenant J.C.C.:
 - Hi I've been waiting for my disabilities check from the city of [redacted] there being difficult my dr.s have requested the insurance papers 2 weeks ago...sorry for the delay.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,300.00 on the first day of each month. Based on the undisputed testimony of the property manager and the emails entered into evidence, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$9,200.00 in unpaid rent from February to May 2021.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$1,125.00 in part satisfaction of their monetary claim for unpaid rent against the tenants.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
February rent	\$2300.00
March rent	\$2300.00
April rent	\$2300.00
May rent	\$2300.00
Filing Fee	\$100.00
Less security deposit	-\$1,125.00
TOTAL	\$8,175.00

The landlords are provided with this Order in the above terms and 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: May 31, 2021

Residential Tenancy Branch