



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on January 25, 2021. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on November 15, 2019, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$3,700.00 is to be paid by the first day of each

month, and that the Landlord had been given a \$1,850.00 security deposit at the outset of this tenancy.

The Landlords testified that the Tenant had not paid the full rent for April, May, and June 2020, for this tenancy, leaving \$9,600.00 in outstanding rent when this tenancy ended on January 13, 2021. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they have not paid the full rent for April, May, and June 2020 and that they owe the \$9,600.00 requested by the Landlord. The Tenant testified that they are experiencing financial difficulties due to the COVID-19 pandemic.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid in full for April, May, and June 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$9,600.00, comprised of \$3,200.00 in rent for April 2020, \$3,200.00 in rent for May 2020 and \$3,200.00 in rent for June 2020. I grant permission to the Landlord to keep the security deposit they are holding for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$7,850.00, consisting of \$9,600.00 in rent, \$100.00 in the recovery of the filing fee for this hearing, less the \$1,850.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 38, 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$7,850.00**. The Landlord is provided with this Order in the above terms, and the Tenant 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: May 31, 2021

Residential Tenancy Branch