



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMAX REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNR MNDCT RP RR FFT
For the landlord: MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2021 (10 Day Notice), for a monetary claim of \$9,700.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order for regular repairs to the unit, site or property, for a rent reduction, and to recover the cost of the filing fee. The landlord applied for a monetary claim of \$11,500.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

The tenants and landlord agent, DL (agent) attended the teleconference hearing. The hearing process was explained to the parties, documentary evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and testimony provided.

Both parties confirmed receiving documentary evidence from the other party and that he had the opportunity to review that evidence prior to the hearing. Based on the above, I find that the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

The parties also confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. Any orders will be emailed to the appropriate party for service on the other party.

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the tenants indicated several matters of dispute on their respective applications, the most urgent of which is to dispute the 10 Day Notice for the tenants. I find that not all the claims on the applications before me are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and for the recovery of their filing fee at this proceeding. The balance of the application for the tenant are **dismissed, with leave to re-apply**, except for the rent reduction and regular repairs to the rental unit as the tenancy has since ended since the tenants filed their application and the rent reduction was already dealt with in a previous decision (Previous Decision). The file number of the Previous Decision has been included on the style of cause for ease of reference.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or loss of rent, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. There is no dispute that the landlord company changed their name to HRES. A fixed-term tenancy began on December 1, 2019 and was scheduled to revert to a month to month tenancy after July 1, 2021. The monthly rent was \$3,800.00 per month and due on the first day of each month. The tenancy agreement indicates that the tenants paid a security deposit of \$1,900.00 and a pet damage deposit of \$1,900.00 at the start of the tenancy (\$3,800.00 in combined deposits), which the landlord continues to hold, according to their application. I find the combined deposits have accrued no interest since the start of the tenancy. The parties agreed that the tenants vacated the rental unit as of March 31, 2021.

As the tenants vacated the rental unit prior to this hearing, I find the tenants' application to dispute the 10 Day Notice is now moot and is dismissed without leave to reapply accordingly as the tenancy ended on March 31, 2021 when the tenants vacated the rental unit.

Given the above, the remainder of this decision will deal with the landlord's monetary claim for unpaid rent and loss of rent. The agent stated that the tenants failed to pay March 2021 rent of \$3,800.00 and that the landlord suffered a loss of rent for April and May of 2021 for an additional amount of \$7,600.00 for April and May 2021 rent combined. The agent stated that the landlord was not able to find new tenants until June 2021.

The agent was asked to present their evidence regarding attempts to re-rent the rental unit and the only document was a posting for \$4,000.00 as of April 15, 2021. While the agent claims the rental unit was advertised in March 2021, there is no documentary evidence to support that before me. The tenants admitted that they did not pay rent for March 2021. The tenants confirmed that they did not have any order from the RTB that gave them authority to not pay March 2021 rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Landlord's claim for unpaid rent and loss of rent – Section 26 of the Act applies and states:

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.

[Emphasis added]

Based on the above, I find the tenants breached section 26 of the Act as the tenants admitted to not paying rent for March 2021 and have provided insufficient evidence to support they had a right under the Act to deduct all or a portion of rent. Therefore, I find the tenants owe the landlord **\$3,800.00** for unpaid March 2021 rent.

Regarding loss of rent for April and May of 2021, section 7 of the Act applies and states:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added]

Based on the above, and having considered the online posting for \$200.00 more rent than what the tenants were paying and the fact that it was not posted until April 15, 2021, I find the landlord failed to comply with section 7(2) of the Act by doing what was reasonable to minimize their loss. At the very least, I would have expected the landlord to initially advertise the rental unit at the same amount \$3,800.00 amount in March 2021, and instead the landlord did neither based on the evidence before me and waited until April 15, 2021 to seek \$200.00 more per month and were not able to find new tenants until June 2021. Given the above, I find the landlord has failed to meet the burden of proof and given that the landlord has the onus of proof with their claim, I dismiss April and May 2021 loss of rent due to insufficient evidence, without leave to reapply.

As the landlord's application had some merit, I grant the landlord **\$100.00** for the recovery of the cost of their filing fee, pursuant to section 72 of the Act.

Given the above, I find the landlords have established a total monetary claim of **\$3,900.00**, comprised of \$3,800.00 in unpaid rent for March 2021 and the filing fee. I **authorize** the landlord to retain the tenants' combined deposits of \$3,800.00, which have

accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of **\$100.00**.

Conclusion

The tenants' application is now moot as the tenancy has ended since they filed their application.

The landlord has established a total monetary claim of \$3,900.00 and has been authorized to retain the tenants' full combined deposits of \$3,800.00 as noted above. The landlord has been granted a monetary order in the amount of \$100.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties as indicated above.

The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 23, 2021

Residential Tenancy Branch