



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd
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:

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent, BC ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on February 23, 2021 by way of registered mail. The landlord provided the proof of service in their evidentiary materials as proof of service. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on February 28, 2021, 5 days after mailing. The tenants did not submit any written evidence for this hearing.

Preliminary Issue- Request for Amendments

Although the landlord had applied for a Monetary Order of \$7,175.00 in their initial claim for unpaid rent, since they applied another \$2,870.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$7,175.00 to \$10,045.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

The landlord also requested an amendment to add a claim for bailiff costs.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

No amendments were received in accordance with RTB Rule 4.6 to add any additional claims. Rule 4.6 exists to ensure that a respondent is aware of the scope of the hearing and is prepared to respond, if they chose to do so. I am not satisfied that this amendment request qualifies as a request under Rule 4.2. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I do not allow the landlord's request for an amendment to add a claim for bailiff costs.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2017, and ended on March 30, 2021. The landlord testified that they had to obtain the services of a bailiff to remove the tenants after they had successfully obtained an Order of Possession in a previous direct request proceeding held on February 8, 2021. Monthly rent was set at \$1,435.00, payable on the first of the month. The landlord still holds the security and pet damage deposits of \$700.00 each deposit.

The landlord filed this application to recover the unpaid rent owed up to March 2021 in the amount of \$10,045.00. The landlord provided the statement of the money owed by the tenant. The landlord is requesting a monetary order for this amount, plus recovery of the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

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.

Based on the undisputed testimony and evidence before me, I find that the tenants failed to pay the outstanding rent for this tenancy in the amount of \$10,045.00 for this tenancy. Accordingly, I allow the landlord's monetary claim for this amount.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$8,745.00 in the landlord's favour.

Item	Amount
Unpaid Rent	\$10,045.00
Filing Fee	100.00
Less Security & Pet Damage Deposits Held	-1,400.00
Total Monetary Order	\$8,745.00

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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: July 28, 2021

Residential Tenancy Branch