



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord made on February 28, 2021 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Tenants did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

I accept the Landlord’s evidence that Tenant SA was served as required under Section 89 of the Act with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on March 12, 2021 to the forwarding address provided by Tenant SA after the end of the tenancy. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that Tenant SA is deemed to have received the Hearing Package on March 17, 2021.

The Landlord did not receive Tenant AB's forwarding address and sent the Hearing package to Tenant A B's business address.

Section 89(1) of the Act provides that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

Given the Landlord's evidence of service on Tenant AB I find that the Landlord did not serve Tenant AB with the Hearing Package as required under the Act. I therefore dismiss the Landlord's application against this Respondent and restrict any monetary order to Tenant SA.

The tenancy agreement does not name Landlord AL as a landlord. As a result, I restrict any monetary order to Landlord GLB, named as landlord in the tenancy agreement.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on July 15, 2018 and ended on July 31, 2020. During the tenancy rent of \$1,950.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$975.00 as a security deposit. The Landlord received Tenant SA's forwarding address on February 3, 2020. The Tenant owes rental arrears of \$7,350.00 as follows:

- \$550.00 for March 2020;
- \$1,950.00 for April 2020;
- \$1,450.00 for May 2020;
- \$1,450.00 for June 2020;
- \$1,950.00 for July 2020.

For this period the Landlord also received rental subsidies for the Tenants' rent in the total amount of \$2,000.00, leaving outstanding arrears of \$5,350.00. The Landlord claims \$5,350.00 for unpaid rent.

The Tenants were required to pay for water and failed to pay the water bill for the period May 1 to June 30, 2020 in the amount of \$92.74. The Landlord provides an invoice and claims this amount.

The Landlord claims an amount for bank fees incurred by the Landlord in relation to the return of the Tenants' cheques. The tenancy agreement does not provide for the collection of these fees.

Analysis

Section 7(2) of the Regulations provides that a landlord must not charge a fee for the return of a tenant's cheque by a financial institution or for late payment of rent unless the tenancy agreement provides for that fee. As the tenancy agreement does not provide for the Tenants to pay for late or returned cheque fees, I find that the Landlord is not entitled to claim such fees and I dismiss this claim.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the Landlord's undusted evidence of unpaid rents I find that the Landlord has substantiated an entitlement to **\$5,350.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the Landlord's undisputed evidence that the Tenants were responsible for the cost of the water utility and given the copy of the water bill, I find that the Landlord has substantiated an entitlement to **\$92.74**. As the Landlord has been substantially successful with its claims, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,542.74**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Landlord's evidence that the Landlord received the Tenant's forwarding address on February 3, 2021 and as the Landlord did not make its application to claim against the security deposit within 15 days from this date I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,950.00**. Deducting this amount from the Landlord's entitlement of **\$5,542.74** leaves **\$3,592.74** owed by the Tenant.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$3,592.74**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 19, 2021

Residential Tenancy Branch