



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,050.00, claiming against the security deposit to apply to this claim; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants, B.B. and J.K. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing, the Landlord had the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenants with the Notice of Hearing by Canada Post registered mail, sent on May 1, 2021. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed her address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that she is not allowed to record the hearing, and she confirmed that she was not doing so.

The Landlord said that she seeks compensation of one month's rent from the Tenants in this proceeding; however, when I asked her why she claimed only half a month's rent, she said she was counting on using the security deposit that she retained for this Application for the other half. I advised the Landlord that if I grant her a Monetary Order for unpaid rent, I will also authorize her to retain the security deposit in full or partial satisfaction of the amount awarded. I explained that an applicant cannot retain the security deposit *and* be granted a Monetary Order for the same amount under the Act.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the failure of the Tenants to pay their April 2021 rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement of the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord for unpaid rent from the Tenants from \$1,050.00 to \$2,100.00.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of her Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed in the hearing that the periodic tenancy began on October 1, 2020, with a monthly rent of \$2,100.00, due on the first day of each month. The Landlord confirmed that the Tenants paid her a security deposit of \$1,050.00, and no pet damage deposit.

In the hearing, the Landlord said that the Tenants moved out on or about April 23, 2021.

She said:

One of the Tenants, [B.B.], sent me a text message that they left on the 23rd of April, although they hadn't paid rent for April. So approximately on the 30th of April, I went by the house and there was evidence that they had moved out and left quite a bit of garbage, although they had cleaned out their belongings.

The Landlord submitted a copy of a text message the Parties exchanged, as follows, although it was not clear on what date these texts were sent:

Tenant: We were out April 23rd as requested.

Landlord: [B.] you didn't pay for April, did not give me notice and I don't have the keys or the garage door opener. What do you suggest?

The Landlord said that on April 28, [B.] texted her, clarifying that he left the keys and garage door openers inside the house.

Analysis

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

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenants had a right to deduct any portion of their rent from the monthly rent due to the Landlord.

I note that B. texted the Landlord a message confirming that they had left the keys and the garage door openers in the rental unit; however, I note that he did not deny the Landlord's claim that the Tenants' failed to pay rent in April 2021.

Based on the evidence before me overall, and pursuant to sections 26 and 67 of the Act, I award the Landlord recovery of **\$2,100.00** in unpaid rent from the Tenants for April 2021. I also award the Landlord with recovery of her **\$100.00** Application filing fee from the Tenants, for a total award of \$2,200.00. The Landlord is authorized to retain the Tenants' \$1,050.00 security deposit in partial satisfaction of these awards. The Landlord is granted a Monetary Order from the Tenants for the balance owing of the awards of **\$1,150.00**, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in her Application for recovery of unpaid rent of \$2,100.00, and the \$100.00 Application filing fee, as she provided sufficient evidence that the Tenants failed to pay April 2021 rent, despite living in the rental unit that month. As such, the Landlord is awarded **\$2,200.00** from the Tenants.

The Landlord is authorized to retain the Tenants' \$1,050.00 security deposit in partial satisfaction of these awards. The Landlord is granted a Monetary Order from the Tenants for of **\$1,150.00** - the outstanding amount of the awards owing by the Tenants.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: July 29, 2021

Residential Tenancy Branch