



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, 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 direct request for an order of possession for unpaid rent, further to having served a 10 Day Notice dated May 13, 2021; a claim for a monetary order of \$5,800.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he 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 him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his 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 he served each Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on June 12, 2021. The Landlord provided Canada Post tracking numbers 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.

In the hearing, the Landlord said that the Tenants moved out on approximately August 4, 2021; therefore, he said he no longer needs an order of possession, and that he was withdrawing this claim.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and he confirmed these addresses in the hearing. He also confirmed his 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 pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Landlord that he is not allowed to record the hearing and he affirmed that he was not.

The Landlord initially applied for \$5,800.00 in compensation from the Tenants; however, he said that the Tenants continued to fail to pay sufficient rent each month. As a result, the Landlord has asked to amend the amount he is claiming to the amount now owed him by the Tenants. The Landlord said that at the end of the tenancy, the Tenants had failed to pay him \$11,250.00 in total.

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 ongoing failure of the Tenants to pay their monthly 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 for the full amount of rent owing. Accordingly, after correcting the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenants from \$5,800.00 to \$11,250.00.

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 the Application filing fee?

Background and Evidence

The tenancy agreement that the Landlord submitted states, and the Landlord confirmed

in the hearing that the fixed-term tenancy began on July 1, 2020, and ran to June 30, 2021. It then operated on a month-to-month basis. The tenancy agreement states that the Tenants were required to pay the Landlord a monthly rent of \$2,750.00, due on the first day of each month. The Landlord confirmed that the Tenants paid him a security deposit of \$1,375.00, and no pet damage deposit. The Landlord said he still holds the security deposit to apply to this claim.

The Landlord submitted a document entitled: "Dispute Explanation". In this document, the Landlord said:

This property is occupied by tenant Yasser Chahin his wife Nesreen Nassleh and their children. Since October 2020 he has difficulty paying rent and has been giving me explanation like having problem with his bank, waiting for his funds from overseas, etc. and I have given him enough opportunity to catch up and did not want to get him out in middle of winter. He has been paying small round sums every now and then and is short every month as per the statement I have submitted.

The amount outstanding at the time of my dispute submission was \$6800.00, and since then he has paid \$1000.00 and then June rent has come due making the amount that he owes to \$11,250.00.

In the hearing, the Landlord answered my questions as to how much did the Tenants paid in which months, and how much is left owing. I filled in the following table from what the Landlord told me in the hearing.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Pre May 2021	\$4,050.00	\$ 0.00	\$4,050.00
May 2021	\$2,750.00	\$1,000.00	\$1,750.00
June 2021	\$2,750.00	\$ 800.00	\$1,950.00
July 2021	\$2,750.00	\$2,000.00	\$ 750.00
August 2021	\$2,750.00	\$ 0.00	\$2,750.00
	SUB-TOTAL		\$11,250.00
	Less security deposit		(\$1,375.00)

	TOTAL OWING	\$9,875.00
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The Landlord said that the Tenants did not pay anything after they vacated the rental unit.

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 the rent from the monthly rent due to the Landlord.

Pursuant to section 26 of the Act, I award the Landlord with **\$11,250.00** in recovery of the unpaid rent from the Tenants. Given his success in this Application, I also award the Landlord recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

The Landlord is authorized to retain the Tenants' \$1,375.00 security deposit in partial satisfaction of the monetary awards, pursuant to section 72(2) of the Act. I grant the Landlord a Monetary Order of **\$9,975.00** for the remainder of the monetary awards owing, including the Application filing fee, pursuant to sections 26 and 67 of the Act.

Conclusion

The Landlord withdrew his claim for an order of possession, because the Tenants had moved out by the time of the hearing. The Landlord was successful in his undisputed claim for compensation from the Tenants for their failure to pay all the rent that was owing throughout the tenancy. The Landlord is also awarded recovery of the **\$100.00** Application filing fee from the Tenants.

The Landlord is authorized to retain the Tenants' **\$1,375.00** security deposit in partial satisfaction of his monetary awards. The Landlord is granted a Monetary Order of **\$9,975.00** from the Tenants for the remainder of unpaid rent owing to the Landlord.

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: October 27, 2021

Residential Tenancy Branch