



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on December 3, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the filing fee from the tenants for the cost of this application.

The landlord attended the hearing and provided affirmed testimony. The tenants did not attend the hearing. The Landlord confirmed she understood Rule 6.11.

The Landlord testified that the tenants moved out of the rental unit part way through the month of September 2021, without proper notice. The Landlord further testified that before they moved out, she sent each tenant a copy of the Application for Dispute Resolution and the Notice of Hearing by registered mail on August 19, 2021. Proof of mailing was provided. I find the tenants received this package on August 24, 2021, the fifth day after their registered mailing, pursuant to Section 90 of the *Act*.

Also, the Landlord stated that she no longer requires an order of possession, given that the tenants moved out in September, and she requested that her application be amended to reflect this. In consideration this, I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is \$2,200.00 and is due on the first of the month. The Landlord testified that she currently holds a security deposit of \$1,100.00.

The Landlord stated that the Tenants have a long history of making partial payments over the last year, and have been perpetually behind on rent for many months. The Landlord provided a payment summary document showing which amounts were paid, and which were outstanding up to May 2021, which was \$3,100.00. However, the Tenants continued to not pay their full rent. Subsequently, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent in July 2021. At that time, the Tenants owed \$5,600.00 in unpaid rent. The Landlord testified that the Tenants failed to pay any rent after receiving the 10 Day Notice, and now owe an additional \$2,200.00 for August, and \$2,200.00 for September 2021, bringing the total to \$10,000.00. The Landlord stated that tenants moved out part way through September 2021, without giving proper Notice.

Analysis

Based on the unchallenged affirmed testimony, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from her undisputed evidence and testimony before me to demonstrate that the tenants owe and have failed to pay \$10,000.00 in accumulated rent over the last year, as laid out in the summary document provided by the Landlord, and as explained in the hearing.

The Landlord requested that they be able to retain the security deposit of \$1,100.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$10,000.00
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$1,100.00)
TOTAL:	\$9,000.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$9,000.00** comprised of rent owed. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 03, 2021