



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlord seeking the following relief:

- an Order of Possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord testified that the tenants were served with the Notice of Dispute Resolution Hearing and all evidence by registered mail on September 2, 2021 and has provided a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer Receipts addressed to each of the tenants, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

During the course of the hearing the landlord advised that the tenants are no longer occupying the rental unit and the landlord has re-rented. Therefore, I dismiss the landlord's application for an Order of Possession.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claims?

Background and Evidence

The landlord testified that a property manager was retained to rent the single family home and a tenancy agreement was entered into by the property management company for the landlord and 2 tenants, a copy of which has been provided for this hearing. The fixed term tenancy was to commence on March 1, 2021 and revert to a month-to-month tenancy after August 31, 2021. Rent in the amount of \$5,400.00 was payable on the 1st day of each month. At the outset of the tenancy the property management company collected a security deposit from the tenants in the amount of \$2,700.00 which is still held in trust by the property management company, and no pet damage deposit was collected.

The landlord further testified that the property manager advised that he never met the tenants and the tenants didn't move into the rental unit. The tenancy agreement appears to be digitally signed on January 30, 2021 and February 1, 2021. The tenants' son took possession and the landlord isn't certain whether or not the tenants' son ever resided in the rental unit, but sub-let the home. The rental home was abandoned sometime in August, 2021, and damages and garbage remained throughout. The property manager changed the locks. Two days after the property manager was there the tenants' son threw a rock through the window.

The tenants paid full rent for March and April, 2021 and paid \$2,099.00 in May; \$2,496.00 in June and no rent was paid for July or August, 2021.

On August 7, 2021 the property manager served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated August 7, 2021 and contains an effective date of vacancy of August 20, 2021 for unpaid rent in the amount of \$8,420.00 that was due on August 1, 2021. The landlord has not been served with an Application for Dispute Resolution by the tenants disputing the Notice, and has not provided a forwarding address to the landlord.

Analysis

Firstly, the landlord has not provided any evidence with respect to damages or other losses, and at the time the application was made the tenants still occupied the rental unit. I find that the damage claims were made prematurely, and I dismiss those portions of the application with leave to reapply.

I accept the undisputed testimony of the landlord that the tenants failed to pay full rent for the months of May or June, 2021, leaving a balance outstanding of \$3,301.00 for May and \$2,904.00 for June. I also accept that no rent was paid for July or August, 2021, and the landlord has established unpaid rent of \$5,400.00 for each of those months. The tenants owe a total of \$17,005.00 and I find that the landlord is entitled to recover that amount.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$2,700.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of \$14,405.00.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order for damage to the rental unit or property is hereby dismissed with leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby order the landlord to keep the \$2,700.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$14,405.00.

This order is final and binding and may be enforced.

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 20, 2021

Residential Tenancy Branch