



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: **OPC, MNRL-S, MNDCL-S, FFL**
 TT: **CNC, LRE, FFT**

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The corporate landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants named the personal landlord and applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

There was a typographic error in the name of the corporate landlord in the landlord’s application which was corrected at the hearing. The corrected name is used in the style of cause for this decision and accompanying order.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The personal landlord attended, confirmed they were an agent for the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenants with the notice of hearing and evidence by registered mail sent on October 5, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on October 10, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act. I note that the failure of a party to accept or pick up registered mail does not override the deeming provisions of the Act.

At the outset of the hearing the landlord withdrew the portion of their application seeking an Order of Possession as the tenants have abandoned the rental unit and the tenancy has ended. The landlord also requested to amend the monetary amount of their claim stating that additional rent has come due and owing since the application was filed. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due over time is reasonably foreseeable I amend the landlord's monetary claim from \$3,850.00 to \$5,800.00.

Issue(s) to be Decided

Is the tenant entitled to any relief?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord gave undisputed evidence on the following facts. The rent for this periodic tenancy was \$1,650.00 payable on the first of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building managed by a strata corporation. A copy of the tenancy agreement was submitted into evidence.

The tenants failed to pay monthly rent as required from September 2021 onwards. The tenants also incurred numerous fines from the strata corporation for their conduct disturbing other occupants of the rental building. The landlord submitted into documentary evidence copies of the ledger for the tenancy as well as correspondence showing the complaints and fines against the tenants. The landlord gave undisputed evidence that the total amount of the arrear as at January 18, 2022, the date of the hearing is \$5,800.00.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Accordingly, as the tenants failed to attend the hearing I dismiss their application in its entirety without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there was an enforceable tenancy agreement requiring the tenants to pay rent in the amount of \$1,650.00 on the first of each month and to abide by the rules of the

strata corporation for the property. I accept the undisputed evidence of the landlord that the tenants failed to pay rent as required and breached numerous strata rules resulting in fines and unpaid rent. I am satisfied on a balance of probabilities that the total amount of the arrear and fines is \$5,800.00. The landlord provided cogent testimony supported in documentary materials.

Accordingly, I issue a monetary award in the landlord's favour in the amount of \$5,800.00.

As the landlord was successful in their application they are also entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,100.00. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the landlord's application and the entirety of the tenants' application are dismissed without leave to reapply.

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: January 18, 2022

Residential Tenancy Branch