



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL, OPB**

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties confirmed that this tenancy has ended and an Order of Possession was no longer necessary. The landlord withdrew that portion of their application.

The landlord submits that since the application was filed additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable I amend the

landlords' application to increase the monetary amount of their claim from \$1,250.00 to \$8,250.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord submits that this periodic tenancy began in August 2020 with initial monthly rent of \$1,200.00 payable on the first of each month. A security deposit of \$600.00 and pet damage deposit of \$300.00 was collected at the start of the tenancy and are still held by the landlord. The monthly rent was subsequently decreased to \$1,000.00.

The landlord submitted pages from their rental ledger showing the last payment received from the tenant of \$750.00 on April 14, 2021. The landlord submits that since that time the tenants have made no further payment of rent until the rental unit was discovered to be abandoned in December 2021. The landlord initially testified that the amount of the arrear was \$10,000, but upon calculation the landlord corrected the figure and submits that there is a total rental arrear of \$8,250.00 as at the date of the hearing.

The tenants dispute that the parties agreed to an amount of monthly rent saying that the rental unit was in need of repairs. The tenants confirmed that they have not paid any rent since April 2021. The tenants agree that this tenancy has ended but dispute that they abandoned the suite claiming they were forcibly ejected by the landlord's "hired goons".

Analysis

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 between the parties wherein the tenants were obligated to pay monthly rent in the amount of \$1,000.00 on the first of each month. I find the tenant's submission that the parties had not agreed on an amount of monthly rent to be of little credibility and contradicted in the documentary evidence of the landlord. I find the tenancy ledger to be clear in indicating the amount of rent owing and received.

I accept the undisputed evidence of the parties that the tenants have paid no rent since the amount of \$750.00 paid on April 14, 2021. I accept the evidence of the landlord that they discovered the rental unit abandoned sometime in December 2021. I do not find the tenants' submission that the landlord had "goons" forcibly eject them from the property to be supported in any evidence nor have an air of reality. I therefore find that the tenants failed to pay full rent as required under the tenancy agreement for the months of May, June, July, August, September, October, November and December 2021 and calculate the total rental arrear to be \$8,250.00.

Accordingly, I issue a monetary award in the landlords' favour for that amount.

As the landlords were successful in their application, they are also entitled to recover their 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 and pet damage 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 \$7,450.00, representing the unpaid rent from April to December 2021 and the filing fee and allowing the landlord to retain the deposits for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenant 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.

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 27, 2022

Residential Tenancy Branch