



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlords: OPR, MNRL-S, MNDCL-S, FFL
Tenants: CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; nad
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords provided proof of service in their evidentiary materials that the tenants were served with their application and evidence package on December 31, 2021 by way of registered mail. In accordance with sections 88, 89, and 90 of the Act, I find the tenants deemed served with the landlords’ package on January 5, 2022, 5 days after mailing.

The landlords testified that the tenants had sent the landlords a text message that they had vacated the property as of March 17, 2022, and that they no longer require an

Order of Possession. Accordingly, the portions of the parties' claims that relate to the 10 Day Notice to End Tenancy are cancelled. The landlords confirmed that they wished to proceed with their monetary claim.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, and for recovery of the filing fee?

Background and Evidence

The landlords testified regarding the following facts. This month-to-month tenancy began on September 1, 2021, and ended on March 17, 2022 after the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on December 7, 2021. Monthly rent was set at \$3,850.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,925.00, which they still hold.

The landlords submitted a monetary order worksheet outlining the outstanding rent for this tenancy in the amount of \$15,500.00. The landlords testified that the tenants have not paid anything for the months of December 2021 through to March 2022. The landlords are requesting a Monetary Order for the unpaid rent, as well as for recovery of the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

The landlords provided undisputed evidence that the tenant failed to pay \$15,400.00 in outstanding rent for this tenancy. On this basis, I allow the landlords to recover the unpaid rent. I also allow the landlords to recover the filing fee.

The landlords continue to hold the tenants' security deposit of \$1,925.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I allow the landlords' monetary claim for unpaid rent in the amount of \$15,400.00 plus \$100.00 for the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim. The landlords are granted a monetary order totalling \$13,575.00.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: March 25, 2022

Residential Tenancy Branch