



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant Ne.W., tenant Ni.W. (the "tenants"), landlord C.Ch. and landlord C.Co. (the "landlords") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

The landlords testified that they served each tenant with a copy of their application for dispute resolution and evidence via registered mail. The landlords testified that the tenants did not pick up their packages. The landlords entered into evidence a photograph of the returned package addressed to tenant Ni.W. on which the registered

mail tracking number can be seen. In the hearing the hearing the landlords were unable to provide the tracking number for the package sent to Ne.W.

Tenant Ni.W. testified that she refused to accept the registered mail package sent by the landlords because she was disgusted with them.

Residential Tenancy Branch Policy Guideline 12 states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above and sections 88, 89 and 90 of the *Act*, I find that tenant Ni.W. was deemed served with the landlords' application for dispute resolution and evidence.

Tenant Ne.W. testified that he never received the landlords' application for dispute resolution and evidence. I find that the landlords have not proved, on a balance of probabilities, that tenant Ne.W. was served with their application for dispute resolution and evidence as the landlords did not provide any proof of service documents and were unable to provide the registered mail tracking number in the hearing. Consequently, I remove tenant Ne.W. as a respondent.

Both parties agree that the tenants did not submit or serve any evidence for this proceeding.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy was set to start on June 1, 2020. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that the tenants moved out of the subject rental property at the end of June 2021 and did not pay rent for that month. The landlords are seeking \$1,400.00 in unpaid rent. The landlords testified that they returned the tenant's security deposit to them before they realized that they didn't pay June 2021's rent. The tenants agreed that the landlords returned their security deposit and that they did not pay any rent for June 2021.

The tenants testified that they thought they moved out at the end of May 2021, and in that case, do not owe rent for June 2021.

The tenants testified that if they moved out at the end of June 2021, then they do not owe rent because the subject rental property was not ready for their June 1, 2020 move in.

The tenants testified that on June 1, 2020 the subject rental property was not completely ready because the landlords were still doing some trim work, there wasn't a lock on the door between the upstairs unit and the downstairs unit, there was an issue with the heating unit, and the landlords left a piano and renovations supplies at the subject rental property. The tenants testified that the piano wasn't moved until August 2020.

The tenants testified that the landlords' family came to the backyard and used their electricity and gas and that they were not compensated for this. The landlords testified that they were compensated for this.

The landlords testified that the subject rental property was ready and available for the tenants to move in on June 1, 2020, but the tenants elected not to fully move into the subject rental property until July 2020 because they had kids in school. The landlords testified that the only items left at the subject rental property on June 1, 2020 were a cupboard and a piano. The landlords testified that the cupboard remained at the subject rental property and the piano was moved approximately one month later. The tenants testified that a cupboard was not left at the subject rental property.

The landlords entered into evidence text messages between tenant Ni.W. and landlord C.Co. dated June 24, 2021 which state:

- C.Co.:
 - Hey [tenant Ni.W.] I'm headed out of town for the weekend so won't be able to do a walk-through until Sunday night if you're available
 - And I also won't be in cell range after about 6 p.m. tonight
- Ni.W.:
 - Hey no problem I never got out to get a hitch I just realized! We are mostly out but have a few odds and ends there! If it works easier you can do the walk through next week abs let us know what you think afterwards?

Analysis

Based on the June 24, 2021 text message exchange between tenant Ni.W. and landlord C.Co., I find that the tenants moved out of the subject rental property at the end of June 2021, not the end of May 2021 as tenant Ni.W. stated that on June 24, 2021, "we are mostly out".

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant Ni.W. was obligated to pay the monthly rent in the amount of \$1,400.00 on the first day of each month, including June 1, 2021.

Based on the testimony of both parties, I find that the tenants did not pay any rent for June 2021, contrary to section 26(1) of the *Act*. I therefore award the landlord \$1,400.00.

I note that even if the subject rental property was not 100% ready for the tenants on June 1, 2020, that does not give the tenants the right to withhold rent from the landlord

one year later. As stated in section 26(1) of the *Act*, even if the landlord does not comply with the *Act*, rent must be paid when it is due on the tenancy agreement. The tenancy agreement states that rent must be paid on the first day of each month.

As the tenants have not filed a dispute for any of the claims made against the landlords in this application for dispute resolution, I am not at liberty to adjudicate those claims.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from tenant Ni.W., pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords in the amount of \$1,500.00.

The landlords are provided with this Order in the above terms and tenant Ni.W. must be served with this Order as soon as possible. Should the tenant Ni.W. 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: May 11, 2022

Residential Tenancy Branch