



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the Residential Tenancy Act ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated January 12, 2022 ("10 Day Notice"); for a monetary order for unpaid rent of \$4,460.00; and to recover the \$100.00 cost of their Application filing fee. However, early in the hearing, the Landlords advised me that the Tenant had vacated the rental unit on April 18, 2022, and therefore, they no longer seek an order of possession.

The Landlords, T.G. and R.R., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about it. During the hearing the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served the Tenant with the Notice of Hearing documents and their evidence by Canada Post registered mail, sent on February 20, 2022. The Landlords provided a Canada Post tracking number as evidence of service. Based on the evidence before me, I find that the Tenant was deemed served with the

Notice of Hearing documents and the Landlords' evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application, and they provided the Tenant's email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlords that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Landlords that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately. The Landlords affirmed that they were not recording the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement, which sets out the following details of the tenancy, which the Landlords confirmed in the hearing. The periodic tenancy began on January 1, 2016, with a monthly rent of \$2,050.00, due on the first day of each month. The Landlords confirmed that the rent had since risen to \$2,230.00. They advised that the Tenant paid them a security deposit of \$1,025.00, and no pet damage deposit. The Landlords confirmed that they still hold the security deposit to apply to this claim.

The Landlords submitted a copy of the 10 Day Notice that they served to the Tenant, and they confirmed that it contains the following details. The 10 Day Notice was signed and dated January 12, 2022, it has the rental unit address, it was served in person on January 12, 2022. The 10 Day Notice has an effective vacancy date of January 22, 2022, and it was served on the ground that the Tenant failed to pay the Landlords \$2,230.00 when it was due on January 1, 2022.

In the hearing, the Landlords advised that the Tenant did not pay any rent from January

2022 until he abandoned the rental unit on April 18, 2022. As such, they said the amount of rent owing has risen to \$8,920.00, which is calculated as four months of rent at \$2,230.00 per month.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I find that the Landlords served the Tenant with the 10 Day Notice pursuant to the Act, and that the 10 Day Notice is compliant with section 52, as to form and content.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the Monetary Order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlords would claim reimbursement for the full amount of rent owing. Accordingly, after amending the Landlords’ original amount claimed, I find it reasonable to increase the amount of the Monetary Order sought by the Landlords from the Tenant from \$4,460.00 to \$8,920.00.

Based on the evidence and authorities before me, I find that the Landlords are successful in their Application, as I find that the Tenant breached section 26 of the Act by the abandoning the rental unit without having paid the rent owing to the Landlords from January 2022 through April 2022. Accordingly, I grant the Landlords a monetary award of **\$8,920.00** for unpaid rent, pursuant to sections 26, 46, and 62 of the Act.

Given their success in this Application, I also award the Landlords with recovery of their

\$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$1,025.00 security deposit in partial satisfaction of the Landlords' monetary award. The Landlords are authorized to retain the Tenant's security deposit, and they are awarded a **Monetary Order** of **\$7,995.00** against the Tenant for recovery of the remaining amount of the award.

Conclusion

The Landlords' Application for recovery of unpaid rent is successful in the amount of \$8,920.00. Further, the Landlords are awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

The Landlords are authorized to retain the Tenant's **\$1,025.00** security deposit in partial satisfaction of the Landlord's monetary award. I grant the Landlords a **Monetary Order** under section 62 of the Act from the Tenant in the amount of **\$7,995.00** for the remainder of the monetary award owed by the Tenant to the Landlords.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 20, 2022

Residential Tenancy Branch