



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNRL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order pursuant to s. 67 for unpaid rent;
- A monetary order pursuant to s. 67 for loss or other money owed; and
- Return of his filing fee pursuant to s. 72.

D.H. attended as the Landlord. The Tenants did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that he served his application and evidence on the Tenants by way of registered mail sent on December 18, 2021. Copies of the registered mail tracking receipts were put into evidence by the Landlord. I find that the Landlord’s application and evidence were served by way of registered mail sent on December 18, 2021 in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord’s application materials on December 23, 2021.

Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to a monetary order for other compensation?
- 3) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 24, 2021.
- Rent of \$4,000.00 was due on the first day of each month.

A copy of the written tenancy agreement was put into evidence. The Landlord indicates that a \$2,000.00 security deposit was to be paid under the tenancy agreement but that the Tenants failed to pay that amount.

The Landlord advised that the Tenants vacated the rental unit in March 2022 after the Landlord had obtained an order of possession. I enquired whether the Landlord had obtained an order for unpaid rent when he obtained the order of possession. The Landlord advised that he received an order for \$4,000.00 for unpaid rent from November 2021. The Landlord could not recall the file number for his previous application.

I have reviewed Residential Tenancy Branch records, which indicates that confirms the Landlord obtained an order for unpaid rent in the amount of \$4,000.00 and an order of possession, both of which were granted on January 7, 2022 after the Landlord had filed a direct request application.

The Landlord seeks an order for additional unpaid rent for the months of December 2021 and January 2022. The Landlord says that Tenants failed to pay rent as per the tenancy agreement and that he received \$1,100.00 in December 2021 as a partial rent payment. The Landlord's evidence includes a rent receipt indicating the \$1,100.00 was received on December 8, 2021.

Analysis

The Landlord seeks an order for unpaid rent and other compensation.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I accept the Landlord's undisputed evidence that rent was payable in the amount of \$4,000.00 on the first day of each month, which is confirmed by the tenancy agreement. I further accept that rent was not paid on December 1, 2021 or January 1, 2022 and that \$1,100.00 was received on December 8, 2021. I note that the Tenants were conclusively presumed to have accepted the end of the tenancy on November 29, 2021 based on the findings of the January 7, 2022 decision. As the Tenants continued to occupy the rental unit, I find that the Landlord could not have mitigated his damages and is entitled to compensation in lieu of rent equivalent to rent payable under the tenancy agreement for the period in which they were overholding.

I find that the Landlord is entitled to an order for compensation in lieu of rent in the amount of \$6,900.00 $((\$4,000.00 \times 2) - \$1,100.00)$.

Conclusion

The Landlord is entitled to an order under s. 67 of the *Act* for unpaid rent in the amount of \$6,900.00.

As the Landlord was successful in his application, I find that he is entitled to his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlord's \$100.00 filing fee.

Taking the above into account and pursuant to ss. 67 and 72 of the *Act*, I order that the Tenants pay **\$7,000.00** to the Landlord (\$6,900.00 + \$100.00).

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with 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: July 14, 2022

Residential Tenancy Branch