



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On January 13, 2022, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord J.K. attended the hearing; however, neither Tenant attended the hearing at any point during the 24-minute teleconference. At the outset of the hearing, I informed J.K. that recording of the hearing was prohibited, and she was reminded to refrain from doing so. As well, she provided a solemn affirmation. The spelling of the Tenants’ names by the Landlords, as noted on their Application, was confirmed with her.

She advised that they served Tenant C.D. with a Notice of Hearing and evidence package by hand on January 27, 2022, and that Landlord D.K. witnessed this service. Based on this undisputed, solemnly affirmed testimony, I am satisfied that C.D. has been duly served the Landlords’ Notice of Hearing and evidence package. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision.

She also advised that that they served Tenant M.T. with a separate Notice of Hearing and evidence package by registered mail on January 26, 2022. She stated that they sent this package to the dispute address. She testified that C.D. provided written notice to end the tenancy on December 27, 2021, that was effective for January 1, 2022. However, C.D. was seen at the rental unit on January 3, 2022, and the Landlords did not ever receive the keys back.

She also testified that M.T. provided written notice to end the tenancy on or around December 31, 2021, that was effective for January 2, 2022. However, she reiterated that they did not ever receive the keys back. She submitted that they obtained vacant possession of the rental unit at the end of January 2022.

Given that this was a month-to-month tenancy, and that rent was due on the first of each month, should the Tenants want to end the tenancy, they must provide one whole month's notice to end their tenancy. As the Tenants provided notice to end their tenancy at the end of December 2021, the effective date of the end of tenancy will automatically self-correct to January 31, 2022, pursuant to Section 53 of the *Act*. As such, as the Tenants were seen on or around the rental unit in January 2022, and as the keys were not returned to the Landlords, I can reasonably infer that the Tenants maintained possession of the rental unit until January 31, 2022.

Consequently, I am satisfied that the Landlords service of the Notice of Hearing and evidence package to the dispute address for M.T. to be acceptable. As a result, I am satisfied that M.T. has been deemed to have received the Landlords' Notice of Hearing and evidence package five days after it was mailed, pursuant to Section 90 of the *Act*. As such, I have accepted the Landlords' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.K. advised that the tenancy started on November 1, 2021, as a month-to-month tenancy. However, as noted above, the Tenants gave improper written notice to end their tenancy and they gave up vacant possession of the rental unit sometime near the end of January 2022. She stated that rent was established at \$1,600.00 per month, that it was due on the first day of each month, and that a security deposit of only \$100.00 was paid, despite the tenancy agreement indicating that \$500.00 was owed in total for this. A copy of the signed tenancy agreement was submitted as documentary evidence.

As noted above, J.K. testified that the Tenants provided written notice to end their tenancy prior to January 1, 2022, and they did not pay any rent for January 2022 rent. As such, she stated that they are seeking compensation in the amount of **\$1,600.00** for the loss of January 2022 rent. She referenced the documentary evidence submitted to support this position.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Section 44 of the *Act* outlines how a tenancy may end and Section 45 states that the Tenants may end the month-to-month tenancy by giving the Landlords their notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlords receive the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As noted above, the effective date of the Tenants' written notice to end their tenancy given in December 2021 will automatically self-correct to January 31, 2022. Therefore, the Tenants would still owe January 2022 rent in full. As the undisputed evidence before me is that the Tenants did not pay any rent for January

2022, I grant the Landlords a monetary award in the amount of **\$1,600.00** to satisfy this debt.

As the Landlords were successful in this claim, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

January 2022 rent	\$1,600.00
Filing fee	\$100.00
Security deposit	-\$100.00
TOTAL MONETARY AWARD	\$1,600.00

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,600.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: August 23, 2022

Residential Tenancy Branch