



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WARRINGTON PCI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order of \$1,927 for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit towards any amount owed, and to recover the cost of the filing fee.

Two agents for the landlord, BC and EJ (agents) attended the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 26, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agents testified that both Hearing Packages were served on the tenants, with one addressed to each tenant in their own package, by registered mail. Two registered mail tracking numbers were provided, both of which have been referenced on the cover page of this decision for ease of reference and has been identified by tenant names, RJ and KK. According to the online registered mail tracking website the registered mail packages were mailed on May 27, 2022 and both Hearing Packages were returned to sender and marked as "unclaimed."

Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mail. Therefore, I find both Hearing Packages were deemed served on both tenants as of June 1, 2022.

Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenants and the hearing continued without the tenants present as both tenants have been deemed served under the Act.

Preliminary and Procedural Matter

The agents confirmed their email address and the email address of the tenants at the outset of the hearing. The decision will be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 15, 2021 and converted to a month-to-month tenancy after January 31, 2022. The tenant's monthly rent was originally \$1,800 and increased by way of a lawful rent increase submitted in evidence, which supports that as of February 1, 2022, the monthly rent increased to \$1,827. The tenants paid a security deposit of \$900 at the start of the tenancy, which the landlord continues to hold.

The landlord is seeking unpaid rent of \$1,827 for April 2022. The agents testified that the tenants failed to pay April 2022 rent and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants vacated the rental unit on April 29, 2022 without paying April 2022 rent. The tenants did attend the outgoing inspection and wrote their written forwarding address on the April 29, 2022 outgoing Condition Inspection Report. The landlord filed their application claiming towards the tenants' security deposit on May 13, 2022.

The landlords are also seeking the filing fee.

Analysis

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

As the tenants were deemed served with the Hearing Packages and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful in the amount of **\$2,197**, which includes the recovery of the cost of the filing fee pursuant to section 72 of the Act in the amount of \$100 as the landlord's application is successful. I have considered the undisputed testimony of the agents and that the application was unopposed by the tenants. The landlord continues to hold the tenant's security deposit of \$900, which has accrued a total of **\$1.92** in interest for a total security deposit including interest of **\$901.92**.

I find the tenant breached section 26 of the Act by failing to pay \$1,827 for April 2022 rent on April 1, 2022. Therefore, I authorize the landlord to retain the tenants' full security deposit including interest of \$901.92 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the balance owing of **\$1,025.08**.

Conclusion

The landlord's application is fully successful.

As indicated above, the landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$1,025.08.

The landlord must serve the tenants with the monetary order along with a demand letter for payment and then may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenants.

The tenants are reminded that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

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: January 26, 2023

Residential Tenancy Branch