



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed on June 7, 2022, under the *Residential Tenancy Act* (the “Act”) , for a monetary order for unpaid rent, late fees, to keep all or part of the security deposit and recover the cost of the filing fee.

On February 6, 2023, the landlords filed an amendment to their application to add a monetary claim for damages to the rental unit. The landlords served the amendment and evidence by registered mail on the same date, which was not received by the tenants until February 9, 2023, that is 11 days before the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Preliminary and Procedural Issues

Amended Application

In this case, the landlords did not serve the tenants with their amended application at least 14 days before the hearing. I find the landlords did not comply with the Residential Tenancy Branch Rules of Procedure 4.1 or 4.6, as an amendment is to be served as soon as possible, and no later than 14 days before the hearing.

The landlord’s documentary evidence in support of the amendment such as receipts are dated shortly after the tenancy ended on July 1, 2022. I find it is unreasonable for the



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landlords to wait to the last possible moment to file their amendment and then serve their documents late. I find this is highly prejudicial to the other party. Therefore, I decline to consider the landlords' amendment. The landlords are entitled to make an application.

Future Service upon the tenants

At the hearing the tenants' confirmed their email addresses for future service of documents. Therefore, I authorize the landlords to serve the tenants by email any future Application for Dispute Resolution relating to this tenancy, this includes the Notice of Hearing and evidence. The tenants were informed of this at the hearing. I have written their email addresses on the covering page of this decision.

The landlords are to provide a copy of this Decision at any future hearing, to show that I have authorized service on the tenants by email. The onus will be on the landlord to prove service, such as providing a copy of the email, showing the attached documents were sent.

The Hearing

At this hearing, I will only consider the issues of unpaid rent, late fees and the security deposit offset, that were in the application filed on June 7, 2022.

The landlord is claiming in their application a late fee of \$10.00 per day for a total amount of \$630.00. This is in clause 3 in the addendum to the tenancy agreement. I find this amount is contracting outside of the Act as the landlord cannot claim more than \$25.00 for late payment of rent, as set out in section 7 of the Residential Tenancy Regulation. As this term is unconscionable and outside of the Act, I find it has no force or effect. Therefore, I dismiss this portion of the landlord's claim.



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Settlement

During the hearing the parties agreed to settle the remaining issues as follows:

- 1) The tenants agreed that they did not pay rent for June 2022, and owe the landlord the amount of \$3,045.00, and the \$100.00 cost of the filing fee for a total of \$3,145.00;
- 2) The landlords will keep the security deposit of \$1,500.00, in partial satisfaction of the amount owed, leaving a balance due to the landlords of \$1,645.00; and
- 3) The parties agreed that the tenants will repay the above amount as follows:
 - The tenants will pay the amount of \$822.50 on or before March 15, 2023 and the remaining balance must be paid on or before May 1, 2023. If the tenants fail to make any of the payments when due, the full amount becomes immediately due and owing and the monetary order may be enforced in Provincial Court (Small Claims).

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Conclusion

As a result of the above settlement, the landlord is granted a monetary order, should the tenants fail to comply with the settlement agreement.

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: February 22 2023

Residential Tenancy Branch