



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Nest Property Management and Real Estate
Service 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 for \$2,900 for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

Landlord agent BB (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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 tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 20, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on each of the tenants separated via email on July 22, 2022. In addition, a Residential Tenancy Branch (RTB) Form 51 *Address for Service* was submitted in evidence for both tenants, which confirms that both tenants agreed to service via email. The email address for each tenant matches the copies of the sent emails proving service.

Section 43 of the Regulation states that documents served by emailed are deemed served 3 days after they are emailed. Therefore, I find that the tenants were deemed served on July 25, 2022 with the Hearing Packages.

RTB Rule 7.3 of the 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.

Preliminary and Procedural Matters

The agent confirmed the email addresses of the landlord and tenants during the hearing. The agent also confirmed their understanding that the decision would 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 tenants' 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 August 1, 2021 and was scheduled to convert to a month-to-month tenancy after June 30, 2022. Monthly rent was \$2,800 per month and due on the first day of each month. The tenants paid a security deposit of \$1,400, which the landlord continues to hold. The interest on that security deposit will be calculated later in this decision.

The agent testified that the tenants breached the fixed-term tenancy by vacating on June 30, 2022 and failed to pay July 2022 rent of \$2,800. The landlord is seeking the unpaid \$2,800 July 2022 rent plus the \$100 filing fee. The agent also submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which supports the unpaid July 2022 rent.

Analysis

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

As the tenants were deemed served with the Hearing Package and did not attend the hearing, I consider this matter to be unopposed by the tenants. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

[emphasis added]

Based on the above, I find the tenants breached section 26 of the Act by failing to pay rent as required for July 2022. As a result, I find the landlord's application is fully successful in the amount of **\$2,900** for \$2,800 for unpaid July 2022 rent plus the additional **\$100** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Pursuant to section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit of \$1,400, which I find has accrued **\$6.51** in interest to date, I grant the landlord authorization to retain the tenants' full \$1,406.51 security deposit including interest, to offset the \$2,900 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenants to the landlord in the amount of **\$1,493.49**.

I caution the tenants not to breach section 26 of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$2,900 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$1,406.51, which includes interest, in partial satisfaction of the landlord's monetary claim. 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 \$1,493.49. The landlord

must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenants have been cautioned as described above.

This decision will be sent by email to both parties. The monetary order will be sent by email to the landlord only for service on the tenants.

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: March 28, 2023

Residential Tenancy Branch