



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord November 15, 2022 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

The Landlord appeared at the hearing with Legal Counsel. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord and Legal Counsel. I told the Landlord and Legal Counsel they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord said the Tenants moved out of the rental unit around January of 2023. The Landlord withdrew the request for an Order of Possession.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord had submitted documentary evidence of service of the hearing package and evidence with the Tracking Numbers on it. The Landlord confirmed the hearing package and evidence were sent to the Tenants at the rental unit by registered mail

November 25, 2022. I looked the Tracking Numbers up on the Canada Post website which shows the packages were delivered December 01, 2022.

Based on the undisputed testimony of the Landlord, documentary evidence of service and Canada Post tracking information, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I find the Tenants received the packages December 01, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord and Legal Counsel were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started December 01, 2020. Rent was \$2,500.00 per month due on the first day of each month. The Tenants paid a \$1,250.00 security deposit.

The Landlord testified that rent was increased to \$3,000.00 as of June 01, 2021, as shown in the addendum to the tenancy agreement.

The Landlord testified that the Tenants failed to pay rent for September, October, November and December of 2022, and therefore owe the Landlord \$12,000.00 in rent. The Landlord is not aware of the Tenants having authority under the *Act* to withhold rent.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

As of June 01, 2021, the Tenants were required to pay \$3,000.00 in rent per month by the first day of each month under the tenancy agreement.

The Tenants did not have authority under the *Act* to withhold rent and therefore had to pay \$3,000.00 per month for September to December of 2022 under section 26(1) of the *Act*.

The Tenants failed to pay rent for September to December of 2022.

The Landlord is entitled to recover unpaid rent of \$12,000.00. I allow the Landlord to amend the Application to seek the full amount of rent outstanding based on rule 4.2 of the Rules.

Given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee under section 72(1) of the *Act*.

In total, the Landlord is entitled to \$12,100.00. The Landlord can keep the security deposit under section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$10,850.00 under section 67 of the *Act*.

Conclusion

The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for \$10,850.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 30, 2023

Residential Tenancy Branch