



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MSND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1346 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. Three agents attended on the landlord's behalf: RK a property manager, AO an accounts receivable clerk, and KH a property manager with the landlord's head office. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent RK testified that the landlord served the tenants with the dispute resolution package on 11 May 2015 by registered mail. The landlord provided me with Canada Post tracking numbers that showed the same. The agent RK testified that the mailing was sent to the rental unit, in which the tenants were still residing. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 16 July 2014. The parties entered into a written tenancy agreement dated 15 July 2014. Monthly rent of \$1,500.00 was due on the first. The tenancy ended 22 May 2015. The landlord continues to hold the tenants' security deposit in the amount of \$750.00, which was collected at the beginning of the tenancy.

On 18 February 2015 the tenants made three payments:

- \$549.16;
- \$950.84; and
- \$200.84.

The agent KH testified that these are the last payments that the landlord received from the tenants.

On 3 March 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) to the tenant. The 10 Day Notice was given as the tenant had failed to pay \$1,299.16 in rent that was due 1 March 2015.

The agent KH testified that the rental unit took about thirty hours to clean and that there were forty hours of repairs required to the rental unit.

The landlord claims for \$3,549.00:

Item	Amount
Unpaid March Rent	\$1,299.00
Unpaid April Rent	1,500.00
Unpaid May Rent	1,500.00
Offset Security Deposit	-750.00
Total Monetary Order Sought	\$3,549.00

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord's agents provided sworn and uncontested testimony that the tenants failed to pay rent when it was due on each of 1 March 2015, 1 April 2015, and 1 May 2015. On the basis of the sworn and uncontested testimony of the agents, the tenants have rent arrears totalling \$4,299.16. I have not been provided with any evidence that indicates that the tenants were entitled to deduct any amount from rent. I find that the landlord has proven the full amount of the claimed rent arrears, that is, \$4,299.00.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the tenants' breach of section 26 caused the landlord a rental loss in the amount of \$4,299.16. I accept that the condition of the rental unit at the end of the tenancy was in such a state that the landlord was unable to rerent the unit for the remainder of May. I find that the landlord could not reduce the amount of its loss and is entitled to the full amount claimed.

The landlord applied to keep the tenants' security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,599.00 under the following terms:

Item	Amount
Unpaid March Rent	\$1,299.00
Unpaid April Rent	1,500.00
Unpaid May Rent	1,500.00
Offset Security Deposit	-750.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,599.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: October 13, 2015

Residential Tenancy Branch

