



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFT

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 sections 26 and 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

At the outset of the hearing tenant N.D. testified that the shortened version of his first name was listed on the dispute resolution application. Pursuant to section 64 of the *Act* I amended the dispute resolution application to state tenant N.D.'s full first name.

The landlords testified that tenant N.D. (the "tenant") was served the notice of dispute resolution package by registered mail on June 13, 2018. The landlords provided the Canada Post Tracking Number to confirm this registered mailing. Tenant N.D. (the "tenant") confirmed receipt of the dispute resolution package on June 17, 2018. I find that the tenant was served with this package on June 17, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on May 15, 2017. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlords. The tenant personally provided the landlords with his forwarding address in writing on May 30, 2018. The tenant did not pay rent for May 2018.

The tenant testified that the landlords served him with a hand written Two Month Notice to End Tenancy for Landlord's Use and told him that if he could move out in one month that they would provide him with his last month of rent for free and would give him money to help move out of the property. The tenant testified that he started to look for a new place and was not able to find anything and so disputed the Two Month Notice with the Residential Tenancy Branch ("RTB"). The decision dated May 10, 2018 (the "Decision") from that dispute was entered into evidence.

The tenant testified that the agreement he had with the landlords to receive one month's free rent was still in place and that he does not owe any money for May 2018's rent. The Decision found that the Two Month Notice did not meet the form and content requirements of section 52 of the *Act* and was therefore null and void and that the tenancy would continue in accordance with the *Act*.

The landlords testified that the tenant failed to pay rent on May 1, 2018 when it was due and so they served him with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of May 11, 2018 on May 2, 2018. The 10 Day Notice and witnessed proof of service documents were entered into evidence. The landlord testified that the tenant vacated the subject rental property in response to the 10 Day Notice. The tenant did not dispute the landlord's testimony concerning the 10 Day Notice. The landlord filed for dispute resolution on June 11, 2018.

Analysis

Payment of Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,000.00 on May 1, 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,000.00 in unpaid rent.

Pursuant to section 51 of the *Act*, the triggering event which entitles a tenant to receive one month's free rent is the receipt of a valid Two Month Notice to end Tenancy for Landlord's Use of Property. I find that the tenant was not entitled to receive one month's free rent as a result of the issuance of the Two Month Notice because the notice was found to be invalid and of no force or effect.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenants' entire security deposit in the amount of \$500.00 in part satisfaction of their monetary claim for unpaid rent against the tenants.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
May 2018 rent	\$1000.00
Filing Fee	\$100.00
Less security deposit	-\$500.00
TOTAL	\$600.00

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 13, 2018

Residential Tenancy Branch