



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on January 14, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenants for the cost of this application.

The Landlord and the Tenants all attended the hearing and provided testimony. The Tenants confirmed receipt of the Landlord's application and evidence, and did not take issue with the service of this documentation. The Tenants did not submit any evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

Both parties agreed that monthly rent was \$1,250.00 and was due on the first of the month. The parties also agreed that the Tenants paid a security deposit in the amount of \$625.00 and the Landlord confirmed that they still hold this amount. The Landlord stated the Tenants never provided their forwarding address. The Tenants attended the hearing and refused to provide the Landlord with their forwarding address, despite maintaining the position that they should be entitled to their security deposit back.

The Landlord submitted copies of the decision from a previous dispute resolution proceeding from August 29, 2019, where the parties mutually agreed to end the tenancy on September 30, 2019, and they also agreed that the last month's rent was \$1,200.00, rather than the usual \$1,250.00. The arbitrator at that hearing made an order to state that rent for September 2019 was \$1,200.00.

The Tenants confirmed that they moved out at the end of September 2019, but claim they paid rent to the Landlord on September 3, 2019. The Tenants stated they paid cash, but were never given a receipt. The Tenants did not have any proof to support they paid in cash and did not have any bank withdrawal records to corroborate their assertions, although they stated they took the money out of the bank.

In contrast, the Landlord stated that she never received any money at all in September 2019, which is why she issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2019 (provided into evidence). Then on September 11, 2019, the Landlord filed this application to recover the unpaid rent. The Landlord stated that they always give the Tenant a receipt for rent they have paid, but there is no receipt for this time because the Tenants never paid.

When asked which receipts the Tenants have to help show how rent payments were handled in the past, they stated they have lost most of them. The Tenants stated that they only had receipts from July and August 2019. The Landlord stated that since their relationship became contentious in June 2019, the Tenants began explicitly asking for receipts right when they paid. The parties agree that receipts were issued for July and August 2019.

The Landlord stated that it would make no sense for the Tenants to drop off \$1,200.00 and not demand a receipt, given that the relationship between them had degraded by that time.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Pursuant to the agreement made between the Landlord and the Tenants at the hearing in August 2019, I find monthly rent for September 2019 was \$1,200.00. I further note the parties mutually agreed to end the tenancy at the end of September, and this is when the Tenants moved out.

The Tenants maintain that they paid rent, on September 3, 2019, by giving it directly to the Landlord. In contrast to this, the Landlord stated that no rent was received, which is why she issued a 10 Day Notice on September 2, 2019. The Landlord denies that any rent was received after the 10 Day Notice was issued.

When considering these two versions of events, I note the Tenants stated they withdrew the cash from the bank but I also note they failed to provide any corroborating documentary evidence (banking information, witness statements, pictures, or other evidence) to show they withdrew or held this cash and subsequently paid it to the Landlord. Further, I note the relationship between the Landlord and the Tenants was contentious and degrading towards the end of August, and into September 2019, and I find it odd that the Tenants would opt to leave a large cash rent payment with the Landlord without a receipt. When weighing these two versions of events, I find I prefer the Landlord's version. I find rent was due, in the amount of \$1,200.00, on September 1, 2019, and I find there is insufficient evidence to show this amount was paid, as the Tenants have asserted. I find it more likely than not that rent was not paid for September 2019. I award the Landlord this amount, in full.

Since the Landlord was successful in this application, I award her the recovery of the filing fee (\$100.00), pursuant to section 72 of the *Act*.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
unpaid rent as above	\$1,200.00
Other:	
Filing fee	\$100.00

Less:	
Security Deposit currently held by Landlord	(\$625.00)
TOTAL:	\$675.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$675.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 14, 2020

Residential Tenancy Branch