



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

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;
- a Monetary Order for damage or compensation, pursuant to section 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.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with her application for dispute resolution on June 12, 2020 via registered mail. The registered mail receipt was entered into evidence. I find that the tenants were deemed served on June 17, 2020, five days after their mailing, in accordance with section 89 and 90 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an

application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$6,675.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$15,575.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$15,575.00.

Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants’ security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord 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 the landlord not all details of her submissions and arguments are reproduced here. The

relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on May 1, 2016 and is currently ongoing. Monthly rent in the amount of \$2,225.00 is payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenants have not paid any rent from April to October 2020. The landlord testified that she posted a repayment plan on the tenants' door on August 27, 2020. The repayment plan – RTB -14 was entered into evidence at states that the tenant owes rent arrears from April to August 2020. The repayment plan is as follows:

- October 1, 2020: \$1,854.16;
- November 1, 2020: \$1,854.16;
- December 1, 2020: \$1,854.16;
- January 1, 2021: \$1,854.16;
- February 1, 2021: \$1,854.16; and
- March 1, 2021: \$1,854.16.

Analysis

Policy Guideline #52 states:

“Affected rent” means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020....

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required....

The C19 Tenancy Regulation sets out that repayment plans must have the following terms:

1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;

2. The payment of the unpaid affected rent must be in equal installments;
3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and
4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant....

If a repayment plan does not comply with the terms and requirements set out above, it has no effect.

I find that the repayment plan served on the tenants by the landlord does not comply with the first term stated above because the landlord's repayment plan ends on March 1, 2021 and not July 1, 2021. I find that the landlord's repayment plan decreased the number of repayment installments payable by the tenants. Therefore, the repayment plan has no effect and the landlord is not entitled to a Monetary Order for affected rent. I dismiss the landlord's application for affected rent with leave to reapply.

I accept the landlord's undisputed testimony that the tenants have not paid September and October 2020's rent which is not affected rent as defined by the C19 Tenancy Regulation.

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*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,225.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlord \$4,450.00 in unpaid rent for September and October 2020.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$950.00

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

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

Item	Amount
September 2020 rent	\$2,225.00
October 2020 rent	\$2,225.00
Filing fee	\$100.00
Less security deposit	-\$950.00
TOTAL	\$3,600.00

The landlord is 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: October 02, 2020

Residential Tenancy Branch