



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$740.00 for unpaid rent or utilities, for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, IW (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 22, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence (Hearing Package) were served on the tenants by registered mail, with one package addressed to each tenant, to the address where the tenants advised the landlord they could send mail to, which was the address of the female tenants' uncle. Two registered mail tracking numbers were provided, both of which have been included on the Style of Cause for ease of reference. According to the online Canada Post registered mail tracking website, both registered mail packages were mailed on September 24, 2021 and both packages were refused by the recipient. Section 90 of the Act states that documents sent by registered mail are deemed served 5 days after they are mailed. The Act also does not permit the refusal of service. Therefore, I find the tenants were deemed served as of September 29, 2021.

Given the above, I find this application to be unopposed by the tenants as I find the tenants were both deemed served as of September 29, 2021 and did not attend the hearing. The hearing continued without the tenants present in accordance with Rule 7.3 and Rule 7.4 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. As the landlord did not have an email address for either tenant, the decision will be sent by regular mail to the tenants.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 28, 2020 and converted to a month-to-month tenancy after April 30, 2021. Monthly rent was \$1,600.00 per month and was due on the 31st day of the month prior. The tenants paid a security deposit \$800.00 at the start of the tenancy, which I will address later in this Decision.

The landlord's monetary claim of \$740.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of August 2020 rent	\$390.00
2. Abnormal wear of recliner	\$50.00
3. Labour cost to submit application and following up on the case	\$200.00
4. Filing fee	\$100.00
TOTAL	\$740.00

Regarding item 1, the landlord has claimed \$390.00 for the unpaid portion of August 2021 rent that the landlord stated the tenants failed to pay and that was due August 1, 2021. The landlord testified that on July 18, 2021, the tenants sent a WeChat message to the landlord that they would be vacating on August 24, 2021. As monthly rent was \$1,600.00 per month, the landlord testified that the tenant advised the landlord to keep their \$800.00 towards unpaid August 2021 rent, and that the tenants only paid \$410.00 for August 2021 rent, leaving rent arrears of \$390.00 for August 2021 rent.

Regarding item 2, the landlord has claimed \$50.00 for abnormal wear of a recliner. The landlord confirmed that the recliner is not listed in the addendum or tenancy agreement, and that there were no before photos or supporting evidence of the value being claimed of \$50.00. In addition, the landlord confirmed that the landlord did not complete a written incoming or outgoing Condition Inspection Report.

Regarding item 3, the landlord has claimed for \$200.00 for the cost of labour to submit their application and for following up on the case.

Regarding item 4, the filing fee will be addressed later in this Decision.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants.

Item 1 - The landlord has claimed \$390.00 for the unpaid portion of August 2021 rent that the landlord stated the tenants failed to pay and that was due August 1, 2021. The landlord testified that on July 18, 2021, the tenants sent a WeChat message to the landlord that they would be vacating on August 24, 2021. As monthly rent was \$1,600.00 per month, the landlord testified that the tenant advised the landlord to keep their \$800.00 towards unpaid August 2021 rent, and that the tenants only paid \$410.00 for August 2021 rent, leaving rent arrears of \$390.00 for August 2021 rent.

Section 26 of the Act requires that tenants pay rent in accordance with the tenancy agreement, which I find was \$1,600.00 owing as of August 1, 2021. I find the tenants only paid \$410.00. As a result, I find the tenants breached section 26 of the Act and owe

the landlord \$1,190.00 for unpaid August 2021 rent as I find the earliest the notice given from the tenants would have resulted in would have been effective August 31, 2021, pursuant to section 45(1) of the Act. Although the landlord stated that the tenants stated that the landlord could retain their security deposit of \$800.00, I formally authorize the landlord to retain the full \$800.00 security deposit towards the \$1,190.00 amount of rent owing, and find the tenants still owe \$390.00 for the remained of August 2021 rent owing.

Item 2 - The landlord has claimed \$50.00 for abnormal wear of a recliner. As the landlord confirmed that the recliner was not listed in the addendum or tenancy agreement and considering that there were no before photos or supporting evidence of the value being claimed of \$50.00, I dismiss this portion due to insufficient evidence, without leave to reapply. I also caution the landlord to complete a written incoming and outgoing Condition Inspection Report in the future, as required by sections 23 and 35 of the Act.

Item 3 - The landlord has claimed for \$200.00 for the cost of labour to submit their application and for following up on the case. I find that the Act does not provide for such costs and that there is no remedy under the Act to file an application other than the filing fee, which I will address next. This item is dismissed without leave to reapply due to insufficient evidence in terms of the value of such a loss.

Item 4 - As the landlord's application had some merit, I grant the landlord **\$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee under the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$490.00** comprised of \$390.00 owing for August 2021 rent, plus the \$100.00 filing fee. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$490.00**.

Conclusion

The landlord's application is partially successful.

The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$490.00 and has been authorized to retain the tenants' \$800.00 security deposit, which has accrued \$0.00 in interest under the Act. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenants may be held liable for all costs associated with enforcing the monetary order.

This decision will be emailed to the landlord and sent by regular mail to the tenants. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 4, 2022

Residential Tenancy Branch