



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MONTELLO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service on October 15, 2015 at the rental unit address in the afternoon and that the tenant accepted the package. Based on the undisputed testimony of the agent and without any evidence before me to prove to the contrary, I accept that the tenant was personally served on October 15, 2015 with the Notice of Hearing, Application and documentary evidence. Given the above, I find the tenant was sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that the tenant vacated the rental unit on November 30, 2015, since filing this application. As a result, the agent requested to withdraw their request for an order of possession as the tenant had already given up possession of the rental unit by vacating the rental unit on November 30, 2015.

The agent also requested to reduce the landlord's monetary claim from \$3,650.00 to \$1,490.00 as the agent stated that a third party assisted the tenant with paying off some of the tenant's rent arrears prior to the hearing. I find that a reduction of the landlord's claim does not prejudice the tenant and permit the landlord to reduce their claim to \$1,490.00 plus the \$50.00 filing fee, as the landlord has also claimed for the recovery of the cost of the filing fee. This amendment was made in accordance with section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The agent testified that a month to month tenancy agreement between the parties began on August 1, 2002 and ended on November 30, 2015 when the tenant vacated the rental unit. Monthly rent was increased during the tenancy to the most recent monthly amount of \$610.00 per month which was due on the first day of each month during the tenancy. The tenant paid a \$270.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord is claiming \$1,490.00 in rent arrears plus the recovery of the cost of the filing fee. The landlord submitted a copy of a 10 Day Notice dated October 2, 2015 in support of the landlord's application which the agent stated the tenant did not dispute.

The landlord has also claimed towards the tenant's security deposit which has accrued a total of \$9.56 since the start of the tenancy, leaving a security deposit balance of \$279.56 being held by the landlord.

Analysis

Based on the documentary evidence, undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The agent testified that the tenant owes \$1,490.00 in rent arrears. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find the tenant breached section 26 of the *Act* by owing \$1,490.00 in rent arrears as claimed by the landlord. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$1,490.00** as claim for rent arrears.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of \$1,540.00 comprised of \$1,490.00 in rent arrears, plus the recovery of the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the landlord continues to hold, in the amount of \$279.56 which includes interest.

I authorize the landlord to retain the tenant's full security deposit including interest of \$279.56 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order

pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,260.44**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$1,540.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit including interest of \$279.56 in partial satisfaction of the landlord's claim.

The landlord has been granted a monetary order under section 67 for the balance due of \$1,260.44. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: January 4, 2016

Residential Tenancy Branch

