



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord, the tenants and the tenants' assistant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants' assistant (the tenant) stated that he would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent by registered mail to the tenants on September 28, 2017. The tenant confirmed this service. In accordance with sections 88 and 89, I find the tenants were duly served with the Application and evidentiary package.

The tenant testified that they did not serve any evidence to the landlord.

On November 22, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the Amendment) to the Residential Tenancy Branch (RTB) to request compensation for loss of rent for October 2017. The landlord admitted that they did not serve the Amendment to the tenants. I find that I cannot consider the amendment as it was not served to the tenants in accordance with

At the outset of the hearing the landlord testified that the tenants vacated the rental unit on September 30, 2017. The landlord requested to withdraw their application for an Order of Possession. The landlords' application for an Order of Possession is withdrawn.

The landlord also requested to amend their monetary claim from \$1,500.00 to \$3,000.00 to be compensated for the loss of the monthly rent for October 2017.

RTB Rule of Procedure 4.2 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. I find that the compensation that the landlord is seeking is not unpaid rent but rather compensation for loss of revenue. For this reason I will not allow the landlord's verbal request to amend their Application at the hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided written evidence that this tenancy began on July 01, 2016, with a current monthly rent of \$1,500.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$750.00.

The landlord also provided into written evidence copies of receipts for the rent paid by the tenants from June 2016 to August 2017. The rent receipts show that \$1,500.00 was paid from June 2016 to February 2017 and \$1,400.00 from March 2017 to August 2017.

The landlord testified that the tenants did not pay the rent for September 2017 and that the landlord suffered a loss in rental income for October 2017. The landlord stated that they are seeking \$1,500.00 in unpaid rent for September 2017, \$1,500.00 in loss of unpaid rent for October 2017 and to keep the security deposit.

The tenant testified they had an agreement with the landlord that if the tenants left the rental unit by the end of September 2017, the landlord would not pursue the loss of unpaid rent for October 2017 and would not keep the damage deposit.

The tenant submitted that the monthly rent is actually \$1,400.00 as the landlord and the tenants verbally agreed to remove laundry facilities from the tenancy agreement in February 2017, and the rent was reduced to reflect the termination of this service.

The landlord contended that the tenants just stopped paying the full rent because they were not happy with the laundry arrangements and removed it from the tenancy agreement on their own without agreement from the landlord.

Analysis

I find that I will not allow the Amendment submitted by the landlord it was not served to the tenants in accordance with the RTB Rules of Procedure 4.6.

Based on the documentary evidence and affirmed testimony, I find that the landlord has accepted rent at \$1,400.00 since March 2017 and provided no evidence that they did not agree with the reduced rent. I accept the tenant's affirmed testimony that a verbal agreement was reached between the landlord and the tenant to terminate a service and reduce the rent to \$1,400.00. However, I find there is no evidence that the landlord agreed to not claim the security deposit or seek loss of rent for October 2017.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$1,400.00, for unpaid rent owing for this tenancy for September 2017.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I also allow them to recover the \$100.00 filing fee from the tenant.

Conclusion

I dismiss the landlord's Application for loss of unpaid rent for October 2017, with leave to reapply.

I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, recover the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid September 2017 Rent	\$1,400.00
Less Security Deposit	-750.00
Filing fee for this Application	100.00
Total Monetary Order	\$750.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 22, 2017

Residential Tenancy Branch