



Dispute Resolution Services

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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's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the Application for Dispute Resolution (the Application) and an evidentiary package were sent by registered mail to the tenant on January 06, 2018. The tenant confirmed this service. In accordance with sections 88 and 89, I find the tenant was duly served with the Application and evidentiary package.

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

At the outset of the hearing the landlord testified that the tenant vacated the rental unit on January 13, 2018. The landlord requested to withdraw their application for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn.

The landlord also requested to amend their monetary claim from \$3,650.00 to \$1,712.50 to remove their monetary claim for half of January 2018, February 2018 and March 2018 in order to account for the fact that the tenant moved out of the rental unit on January 13, 2018.

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 the tenant is not prejudiced by a lower monetary claim from the landlord and for this reason I allow the landlord's amendment

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 testified that this tenancy began on December 01, 2015, with a current monthly rent of \$775.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$387.50.

The landlord testified that the tenant did not pay the full monthly rent for November 2017, December 2017 and January 2018. The landlord stated that they are seeking unpaid rent in the amount of \$550.00 for November 2017, \$775.00 for December 2017 and \$387.50 for January 2018, to recover the filing fee for this application and to keep the security deposit.

The tenant testified that they did not dispute the amount claimed by the landlord for unpaid rent.

Analysis

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 \$1,712.50, for unpaid rent owing for this tenancy for November 2017, December 2017 and January 2018 .

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 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 tenant's security deposit:

Item	Amount
Balance of Unpaid November 2017 Rent	\$550.00
Unpaid December 2017 Rent	775.00
Half of Unpaid January 2018 Rent	387.50
Less Security Deposit	-387.50
Filing fee for this Application	100.00
Total Monetary Order	\$1,425.00

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: February 21, 2018

Residential Tenancy Branch