



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for unpaid rent, to retain the security deposit towards the total amount owed and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 15 minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding Package (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing was sent by registered mail on May 10, 2018 and copies of their evidence was sent by registered mail on May 29, 2018. Both registered mail receipts were submitted in evidence. The Landlord testified that the registered mail was sent to the Tenant at the forwarding address he provided to them on his written notice to end the tenancy. I accept that the Tenant was duly served with the Notice of Hearing in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order as compensation for unpaid rent?

Is the Landlord entitled to retain the security deposit towards compensation owed?

Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy and submitted the tenancy agreement into evidence. The tenancy began on April 1, 2016. Rent in the amount of \$856.00 was due on the first day of the month. A security deposit was paid at the outset of the tenancy in the amount of \$397.50 and the Landlord confirmed they are still in possession of the full security deposit amount.

The Tenant provided notice in writing on March 30, 2018 that he would be ending his tenancy on April 30, 2018. His forwarding address was provided in writing on this letter as well.

The Landlord testified that the Tenant did not pay rent for April 2018, so they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The 10 Day Notice was posted on the Tenant's door on April 6, 2018 and was submitted in evidence.

On April 5, 2018, the Landlord provided a notice to the Tenant with two dates and times to conduct a move-out condition inspection report. The notice was served by posting it on the Tenant's door and putting it under the door of the rental unit. When they did not hear back from the Tenant, a Notice of Final Opportunity to Schedule a Condition Inspection was issued by the Landlord. The Tenant did not respond to the notices regarding the move-out condition inspection report and therefore it was conducted without him. As the final condition inspection report was not completed with the Tenant, the Landlord did not receive permission from the Tenant to retain any amount from the security deposit.

Analysis

Based on the undisputed testimony and evidence of the Landlord, I accept that the Tenant did not pay rent for April 2018, despite occupying the rental unit until April 30, 2018.

As the Tenant was occupying the rental unit in April 2018, I find that the Landlord experienced the loss of rental income for this month. In accordance with Section 67 of the *Act*, if loss results from one party not complying with the *Act*, the party that is not in compliance must compensate the other party for that loss. As such, I find that the Tenant owes the Landlord one month rent in the amount of \$856.00.

Section 38(1) of the *Act* states that a landlord has 15 days from the later date of when the tenancy ends or the forwarding address is provided in writing to repay the security deposit or apply for dispute resolution claiming against it.

Given that the Tenant's forwarding address was provided in writing on March 30, 2018 and the tenancy ended on April 30, 2018, I find that the Landlord had 15 days from April 30, 2018 to repay or file a claim against the security deposit. As the Landlord applied for dispute resolution on May 9, 2018, they applied against the security deposit within the time allowable under the *Act*. As such, I find that the Landlord is entitled to retain the security deposit in partial satisfaction of the total compensation owed.

I also note that the Tenant extinguished his right to the return of the security deposit pursuant to Section 36(1) of the *Act*, as the Landlord offered at least two opportunities for the move-out Condition Inspection and the Tenant did not participate.

As the Landlord was successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be issued to the Landlord in the amount outlined below.

Monetary Order Calculations

April 2018 rent	\$856.00
Recovery of filing fee	\$100.00
Less security deposit	(\$397.50)
Total owing to Landlord	\$558.50

Conclusion

The Landlord is allowed to retain the security deposit in partial satisfaction of the total amount owed.

Following the deduction of the security deposit as per the above calculations, and pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** for

the balance due in the amount of **\$558.50** for rent owed for April 2018 and the recovery of the filing fee for this application.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: June 20, 2018

Residential Tenancy Branch