



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security/pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:02 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Landlord H.D. attended the hearing on behalf of the landlords and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Landlord's Application

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the respondent with the Notice of Dispute Resolution Proceeding for this hearing.

The landlord provided sworn testimony that they served a copy of the Notice of Dispute Resolution Proceeding package to the tenant by Canada Post registered mail on May 8, 2018. The landlord verbally provided a Canada Post tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord stated that the tenant's wife had told

them that he had moved back to live with his parents, so the landlord sent the package to the tenant's parents' address.

As the landlord provided sworn testimony that they served the tenant by registered mail to an address where the tenant's wife said he was now residing, and provided a registered mail tracking number in support of their testimony, I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to Landlord's Application

The landlord requested to amend their application to withdraw the part of their claim against the tenant pertaining to compensation for damages. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to withdraw the part of their claim seeking compensation for damages since it would not be prejudicial to the tenant.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord did not submit any documentary evidence in support of their claim for unpaid rent, however, the landlord testified that there was a written tenancy agreement between the landlord and the tenant, that had been signed by both parties.

The landlord provided the following undisputed testimony regarding the tenancy agreement. The tenancy began on April 1, 2017 as a fixed term tenancy with an end date of April 1, 2018, at which time the tenancy converted to a month to month agreement. Rent of \$2,000.00 per month was due on the first of the month. A security deposit of \$1,000.00 was paid by the tenant at the beginning of the tenancy and continues to be held by the landlord.

The landlord testified that the tenant failed to pay rent for the months of March and April 2018. Between approximately April 26 and 28, 2018, the landlord spoke with the tenant's wife, who stated that the tenant had moved out to go live with his parents as a result of a marital

breakdown. Therefore, by April 28, 2018, the landlord confirms that the rental unit had been vacated by the tenant and they had resumed possession of the rental unit.

The landlord is now seeking a total of \$4,000.00 in unpaid rent for the months of March and April 2018.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$2,000.00, as established in their agreed upon tenancy agreement. Further to this, I find that there is no evidence before me to conclude that the tenant had any other right to withhold rent for the months of March and April 2018, and therefore he remained obligated to pay rent for these months when due.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$4,000.00 (\$2,000.00 x two months) for unpaid rent for the months of March and April 2018.

The landlord continues to retain the tenant's security deposit of \$1,000.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord to retain the tenant's entire security deposit of \$1,000.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing.

Further to this, as the landlord was successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant. A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlord as a monetary award	\$4,000.00
Landlord to retain security deposit in partial satisfaction of monetary award	(1,000.00)
Remaining amount of unpaid rent owing to the landlord	= \$3,000.00
Recovery of filing fee for this Application	+100.00
Total Monetary Order in Favour of Landlord	\$3,100.00

As I have found that the portion of the landlord's application related to compensation for damages has been withdrawn, I make no findings on the merits of that part of the landlord's

claim. The landlord is at liberty to reapply on those aspects of their claim, however the issuance of this decision does not extend any applicable time limits under the *Act*.

Conclusion

I order the landlord to retain the \$1,000.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$4,000.00 for unpaid rent owing for the months of March and April 2018.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$3,100.00 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlord's 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 18, 2018

Residential Tenancy Branch