



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent 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 10:17 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent attended the hearing on behalf of the landlord 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 were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that he had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that he had served the tenant with notice of this hearing by Canada Post registered mail on May 11, 2018, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. As such, I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord's agent advised that the amount of unpaid rent of \$12,200.00 claimed in the application was only current up to the end of March 2018. The landlord's agent requested to amend the application to include unpaid rent for the months of April and May 2018, at a monthly rent of \$1,500.00. Therefore, the landlord requested a total claim of \$15,200.00 [$\$12,200.00 + (2 \times \$1,500.00)$] in unpaid rent. Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to include unpaid rent in the amount of \$1,500.00 per month for the months of April and May 2018, since the tenant continues to reside in the rental unit and can reasonably have anticipated that she would be held responsible for this rent payment.

Issue(s) to be Decided

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

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

Is the landlord 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's agent provided the following undisputed information about the tenancy agreement, supported by an unsigned copy of the written tenancy agreement submitted into documentary evidence. The tenant continues to reside in the rental unit. The tenancy began as a fixed term tenancy on March 1, 2017 with an end date of February 28, 2018, at which point the tenancy converted to a month to month basis. Monthly rent is \$1,500.00 due on the first of the month. The tenant paid a security deposit of \$750.00 at the beginning of the tenancy and this amount continues to be held by the landlord.

The landlord's agent testified that the tenant owed \$200.00 in unpaid rent for the month of July 2017 and that she failed to pay any rent for the months of August 2017 up to and

including the month of May 2018, for a total amount of \$15,200.00 owing in unpaid rent, as follows:

Months	Unpaid Rent
July 2017	\$200.00
August 2017 to May 2018 [10 months x \$1,500.00/month]	\$15,000.00
Total Unpaid Rent Owed by Tenant	= \$15,200.00

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 \$1,500.00, 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 from July 2017 to May 2018, and therefore she 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 \$15,200.00 for unpaid rent owing for the months of July 2017 to May 2018.

The landlord continues to retain the tenant's security deposit of \$750.00. 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 retain the tenant's entire security deposit of \$750.00 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 the landlord is 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	\$15,200.00

award	
Landlord to retain security deposit in partial satisfaction of monetary award	(750.00)
Remaining amount of unpaid rent owing to the landlord	= \$14,450.00
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlord	\$14,550.00

Conclusion

I order the landlord to retain the \$750.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$15,200.00 for unpaid rent owing for the months of July 2017 to May 2018.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$14,550.00 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 22, 2018

Residential Tenancy Branch