



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNRL 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 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 2:00 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing 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.

As only the landlord attended the hearing, I asked the landlord to confirm that she had served the tenant with the Notice of Dispute Resolution Proceeding package for this hearing. The landlord testified that she had served her application and the notice of this hearing by Canada Post registered mail on December 21, 2017 and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. With the agreement of the landlord, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was delivered to and signed for by the tenant. As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act*.

Preliminary Issue – Service of Landlord's Evidence

The landlord stated that on June 2, 2018 she sent the tenant the evidentiary materials in support of her claim by Canada Post registered mail and provided a tracking number as

proof of service, which I have noted on the cover sheet of this decision. The landlord advised that this package was returned to her as undelivered with the notation “moved” written on the package.

Rule 3.11 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for service of evidence, as follows:

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

I find that the five-month delay between the time the landlord served her notice of dispute resolution proceeding package and the time she served her evidence package to the tenant was unreasonable. Therefore, in accordance with Rule 3.11, I have not considered the documentary evidence submitted by the landlord, and I have only considered the landlord's undisputed testimony provided at the hearing.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary award for damage or compensation?

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 provided the following undisputed testimony regarding the tenancy agreement. The tenancy began on November 1, 2017 as a month to month tenancy. Monthly rent of \$1,900.00 was due on the first of the month. The tenant paid a security deposit of \$500.00 which continues to be held by the landlord.

A condition inspection report was completed with the tenant at move in. The tenant moved out at the beginning of December 2017 without notifying the landlord, therefore the landlord did not schedule a move out inspection with the tenant. However, on December 4, 2017, the tenant attended the rental unit to drop off the keys to the landlord. At that time, the tenant provided her forwarding address by writing it on the move-out condition inspection report which the landlord had completed on her own. The tenant signed the condition inspection report and added her own comments disputing the landlord's assessment of the unit's condition.

The landlord testified that the tenant's rent cheque for December 2017 was returned due to insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on December 2, 2018 with an effective vacancy date of December 30, 2017. The landlord stated that the tenant moved out of the rental unit at some point between December 2 and 4, 2017, and did not pay rent for the month of December 2017.

On December 17, 2017, the landlord filed an Application for Dispute Resolution to retain the tenant's security deposit in partial satisfaction of the unpaid rent owed by the tenant. The landlord's application was made within 15 days of the date the tenant provided the landlord with her forwarding address, in accordance with time limit required by section 38 of the *Act*.

The landlord testified that the tenant left behind belongings and garbage that the landlord had to take to waste disposal at a cost of \$10.00. Further to this, the landlord stated that she incurred a carpet cleaning and repair bill of \$199.50 due to urine which had saturated part of the carpet requiring professional cleaning and the replacement of the carpet underlay.

Analysis

The landlord has claimed for compensation due to damages and due to unpaid rent. I have addressed my findings on each of these claims below.

Claim for Damages

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord failed to serve her evidence, which included receipts and photographic documentation in support of her damages claim, on the tenant within a reasonable time as required by the Rules of Procedure. As such, I have excluded consideration of the landlord's submitted evidence. Without being able to consider the landlord's submitted documentary and photographic evidence, I am unable to find that the landlord has provided sufficient evidence of the monetary amount of the damages and losses claimed as a result of the carpet cleaning and repair, and for garbage removal.

Therefore, I decline the landlord's request for reimbursement of this expense.

Claim for Unpaid Rent

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 \$1,900.00, 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 December 2017, and therefore she remained obligated to pay rent for this month when due.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,900.00 for unpaid rent owing for the month of December 2017.

The landlord continues to retain the tenant's security deposit of \$500.00. 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 \$500.00 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 mostly 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 award	\$1,900.00
Landlord to retain security deposit in partial satisfaction of monetary award	(500.00)
Remaining amount of unpaid rent owing to the landlord	= \$1,400.00
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlord	\$1,500.00

Conclusion

I order the landlord to retain the \$500.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$1,900.00 for unpaid rent owing for the month of December 2017.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,500.00 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: July 17, 2018

Residential Tenancy Branch