



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL

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 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 landlord A.P. (herein referred to as "the landlord") appeared at the date and time set for the hearing of this matter, and spoke on behalf of both the landlords. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:51 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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 Notice of Dispute Resolution Proceeding Package

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 for this hearing.

The landlord stated that her application for substituted service to be able to serve the tenant via email had been declined, and she was directed to serve the tenant at one of

the forwarding addresses, for service of documents, provided by the tenant on the Mutual Agreement to End Tenancy which was signed by both parties on February 21, 2017.

The landlord testified that she sent the Notice of Dispute Resolution Proceeding, and a copy of all the evidentiary materials she submitted in support of her claim, in a package addressed to the tenant, to the address of the tenant's parent, which was one of the addresses provided by the tenant as a forwarding address for service of documents.

The landlord testified that she sent the package via Canada Post Xpresspost mail on December 28, 2017, and that she had checked the tracking report to confirm that the package had been delivered and a signature for delivery obtained. The landlord provided the Canada Post Xpresspost 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*.

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 provided the following undisputed testimony regarding the tenancy agreement. The tenancy began on August 15, 2016 as a one-year fixed term tenancy. Monthly rent of \$1,350.00 was due on the first of the month. The tenant paid a security deposit of \$675.00 which continues to be held by the landlord.

The landlord explained that the tenant experienced some financial difficulties and the parties mutually agreed to end the tenancy effective February 28, 2017. The landlord

submitted into documentary evidence a copy of the Mutual Agreement to End Tenancy (Mutual Agreement) signed by the tenant and the landlord.

At the end of the tenancy, the tenant was in rental arrears of \$2,400.00. This was noted in the Mutual Agreement and acknowledged by the tenant per her signature on this agreement. As one of the terms of the Mutual Agreement, the tenant agreed in writing for the landlord to retain the security deposit “and deduct it off of the outstanding balance due”.

After moving out of the rental unit, the landlord reported that the tenant made payments toward the \$2,400.00 in rental arrears, as follows:

- \$300.00 on June 8, 2017
- \$70.00 on August 12, 2017

The landlord stated that the current amount of rental arrears owed by the tenant is \$2,030.00 [\$2,400.00 - \$370.00].

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 evidence and testimony presented by the landlord at the hearing, I find that she is entitled to a monetary award in the amount of \$2,030.00 for rental arrears owed by the tenant.

The landlord continues to retain the tenant’s security deposit of \$675.00. 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 \$675.00 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 award	\$2,030.00
Landlord to retain security deposit in partial satisfaction of monetary award	(675.00)
Remaining amount of unpaid rent owing to the landlord	= \$1,355.00
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlord	\$1,455.00

Conclusion

I order the landlord to retain the \$675.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$2,030.00 for unpaid rental arrears.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,455.00 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 23, 2018

Residential Tenancy Branch