



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing originally convened as a Direct Request Proceeding on August 15, 2018. The Interim Decision dated August 15, 2018 ordered that this matter re-convene as a participatory hearing. After receiving the Interim Decision dated August 15, 2018, the landlord made a subsequent identical Direct Request Application for the same issues addressed in the August 15, 2018 Interim Decision. As today's participatory hearing was already scheduled, the duplicate applications were joined.

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package in person on August 4, 2018. I find that the tenant was served with this package on August 4, 2018, in accordance with section 89 of the *Act*.

At the beginning of this hearing the landlord testified that on September 30, 2018 the tenant moved out of the subject rental property. Since the tenant is no longer residing at the subject rental property, I dismiss the landlord's application for an Order of Possession for unpaid rent.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on April 1, 2017 and ended on September 30, 2018. Monthly rent in the amount of \$1,150.00 was payable on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$100.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 4, 2018 he personally served the tenant with a 10 Day Notice to End Tenancy for unpaid rent, with an effective date of August 14, 2018 (the "10 Day Notice").

The landlord testified that the tenant failed to pay rent in the amount of \$1,150.00 on August 1, 2018, when it was due. The landlord testified that the tenant has not paid any rent for August or September 2018. The landlord testified that he is seeking to recover August and September 2018's rent from the tenant in addition to the filing fee for this application.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00 on the first day of each month for August and September 2018, which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$2,300.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit and pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and pet damage

deposit in the amount of \$650.00 in part satisfaction of his monetary claim for unpaid rent against the tenant.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
August rent	\$1,150.00
September rent	\$1,150.00
Less security deposit	-\$550.00
Less pet damage deposit	-\$100.00
Filing Fee	\$100.00
TOTAL	\$1,750.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: October 03, 2018

Residential Tenancy Branch