



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MONTANA DEV (SHAUGNESSY)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for payment of rent arrears and other damages, and to retain the security deposit. The Landlord also requests an order for payment of the filing fee.

The Landlord’s agent and the Tenant appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The Tenant noted that the one named tenant is a young child and that her name was misspelled; with the Landlord’s permission, this was corrected and is reflected in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation for cleaning, rent and other damages, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began November 1, 2013 and ended February 28, 2018. The monthly rent was \$670.00 for this month-to-month tenancy, payable on the 1st of each month; it was later increased to \$731.00 per month. A security deposit of \$335.00 was paid. A copy of the signed tenancy agreement was submitted into evidence. The Tenant vacated the premises around February 15 and returned the keys on February 22; the Landlord states that the tenancy ended February 28, 2018. The Landlord acknowledged written notice of the forwarding address.

The Landlord is claiming payment of the February rent which is in arrears of \$731.00. It is also charging a NSF cheque fee of \$25.00 when the pre-authorized payment for the February rent did not process, for a total claim of \$756.00. The Landlord asks to apply the \$335.00 security deposit against this claim, leaving a balance of \$421.00. The Landlord also requests \$100.00 for the filing fee.

The Tenant states that she was in a relationship with the caretaker and that in December, she asked him to move out. She awoke one morning with him standing by her bed where she and her child were sleeping. Charges were laid and the caretaker was found guilty and is awaiting sentencing. The Tenant states that she fled for fear of her safety because the caretaker used his management set of keys to enter her rental unit and the management company failed to obtain his criminal record when he was employed by them. She was advised that she did not have to pay the February rent and plans to file a counter-claim but her representative did not take action in time for this hearing.

Analysis

The Tenant is under a legal obligation to pay the rent in full and on time:

26 *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Although the Act recognizes the need to end a fixed term tenancy early in instances of domestic violence, there is no right to stop paying rent to the Landlord during the tenancy. Accordingly, I must find that the Tenant owes the Landlord \$731.00 for the February rent, along with the \$25.00 NSF charge which is reasonable. As the Landlord was successful, I am awarding the \$100.00 filing fee.

The Tenant has rights under the Act to quiet enjoyment of the rental unit; however, that claim is not before me and I make no findings of fact in regards to this allegation that the caretaker infringed upon her rights.

The Tenant paid a security deposit of \$335.00 and I find that the Landlord applied for dispute resolution within 15 days of the date the tenancy ended as per section 38(1) of the Act. I am allowing the Landlord to retain this deposit in partial satisfaction of the claim, which is calculated as follows:

The final monetary order is calculated as follows:

Item	Amount
Rent Arrears	\$731.00
NSF charge	25.00
Less: security deposit	(\$335.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$521.00

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant shall pay forthwith to the Landlord the sum of \$521.00.

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 04, 2018

Residential Tenancy Branch