



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALLFINANCIALCORPORATION
and [tenant name suppressed to protect privacy]

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 sections 26 and 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The resident manager (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 by registered mail on March 23, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on March 28, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

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 retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?

3. 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 her 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 December 1, 2014 and ended on March 21, 2018. Monthly rent in the amount of \$765.00 was payable on the first day of each month. A security deposit of \$367.50 and a pet damage deposit of \$200.00 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 this tenancy ended by way of a 10 Day Notice to End Tenancy for unpaid rent with an effective date of March 15, 2018 (the "10 Day Notice"). The landlord testified that the 10 Day Notice was served on the tenant because she did not pay March 2018's rent. The landlord testified that the tenant has still not paid March 2018's rent.

The landlord testified that she is seeking the following:

Item	Amount
March 2018 rent	\$765.00
Carpet cleaning	\$68.25
Rent late fee	\$20.00

The landlord testified that the carpets of the subject rental property needed cleaning after the tenant moved out and that the cost of cleaning the tenant's carpets was \$68.25. A receipt for the carpet cleaning was not provided.

The landlord testified that the tenant owes \$20.00 for late payment of March 2018's rent, pursuant to the tenancy agreement which states:

"The tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the notice is given. Late payments are subject to a charge of \$20.00".

The landlord testified that on March 21, 2018 the tenant signed a document permitting the landlord to retain her security deposit and pet damage deposit in partial satisfaction of her rental arrears, carpet cleaning and late rent fee. The document dated March 21, 2018 was entered into evidence.

The landlord testified that a move in condition inspection and inspection report were completed on December 1, 2014 and a move out inspection and inspection report were completed on March 20, 2018. The landlord testified that the inspections were completed with the tenant and that the tenant was provided with copies of the move in and move out condition inspection reports. The move in and move out condition inspection reports were signed by the landlord and the tenant.

The landlord testified that the tenant provided her forwarding address in writing to the landlord on the move out condition inspection report on March 20, 2018. The move in and move out condition inspection reports were entered into evidence. The landlord applied to retain the tenant's security and pet damage deposits on March 15, 2018.

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 \$765.00 on the first day of March 2018 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$765.00 in unpaid rent.

The landlord applied for a Monetary Order for unpaid rent, she did not apply for a Monetary Order for damage or compensation under the *Act*. I therefore find that the landlord cannot recover damages for carpet cleaning or the late fee as these claims do not qualify as unpaid rent. Should the landlord choose to file another application for damage or compensation under the *Act*, the landlord may claim the late fee and carpet cleaning fee in that application.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Pursuant to section 38 of the *Act* and the tenant's signed authorization allowing the landlord to retain her security deposit of \$367.50 and her pet damage deposit of \$200.00, I find that the landlord is entitled to retain the tenant's security and pet damage deposits.

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 due to the tenant.

As the landlord was successful in her application, I find that she 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
March 2018 rent	\$765.00
Filing fee	\$100.00
Less security deposit	-\$367.50
Less pet damage deposit	-\$200.00
TOTAL	\$297.50

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: October 17, 2018

Residential Tenancy Branch