



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFT

Introduction

This hearing dealt with the landlords' application 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 section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord's agent (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.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of the Hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed affirmed testimony that the Landlord's Application for Dispute Resolution (the Application) and evidence were sent by registered mail to the tenant on November 09, 2018. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence on November 14, 2018.

At the outset of the hearing the landlord submitted that they have an Order of Possession from a previous hearing with the Residential Tenancy Branch (RTB). The landlord requested to withdraw their application for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn pursuant to section 64 of the Act.

The landlord submitted that the tenant is still in the rental unit. The landlord requested to amend their monetary claim from \$3,750.00 to \$5,550.00 to reflect the tenant's failure to pay \$900.00 in monthly rent for November 2018 and December 2018, the additional months of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. As this is clearly rent that the tenant would have known about and resulted since the landlord submitted their Application, I allow the amendment for increased rent pursuant to section 64 of the Act.

Issues(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on October 01, 2017, with a monthly rent of \$900.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$450.00.

The landlord provided a copy of a signed 10 Day Notice to End Tenancy (the 10 day Notice) dated October 11, 2018, and identifying \$3,750.00 in rent owing for this tenancy.

The landlord submitted that the tenant did not pay the monthly rent for June 2018, July 2018, August 2018, September 2018, November 2018 and December 2018. The

landlord stated that the tenant still occupies the rental unit and that they are in the process of enforcing the Order of Possession previously obtained.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the undisputed written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award in the amount of \$5,550.00, for unpaid rent owing for this tenancy for June 2018, July 2018, August 2018, September 2018, November 2018 and December 2018.

As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid June 2018 Rent	\$150.00
Unpaid July 2018 Rent	900.00
Unpaid August 2018 Rent	900.00
Unpaid September 2018 Rent	900.00
Unpaid November 2018 Rent	900.00
Unpaid December 2018 Rent	900.00
Less Security Deposit	-450.00
Filing fee for this Application	100.00
Total Monetary Order	\$4,300.00

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 these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 21, 2018

Residential Tenancy Branch